Exhibit 2

CONFIDENTIAL

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
)
SECURITIES INVESTOR)
PROTECTION CORPORATION,)
)
Plaintiff-Applicant,)
)
vs.) 08-01789 (SMB)
)
BERNARD L. MADOFF)
INVESTMENT SECURITIES, LLC,)
)
Defendant.)
)
)
In re:)
)
BERNARD L. MADOFF,)
)
Debtor.)
)

Videotaped Deposition of BERNARD L. MADOFF, VOLUME I, taken on behalf of the Customers, before K. Denise Neal, Registered Professional Reporter and Notary Public, at the Federal Correctional Institution, 3000 Old Highway 75, Butner, North Carolina, on the 26th day of April, 2017, commencing at 9:07 a.m.

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Ken Morrison, CLVS

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THE VIDEOGRAPHER: My name is Ken Morrison representing Veritext Legal Solutions. The date today is April 26th, 2017 and the time is 9:07 a.m. This is the deposition being held at Butner Federal Correctional Facility located at 3000 Old 75 Highway, Butner, North Carolina 27509 and is taken by counsel for the Plaintiffs in the case of Securities Investor Protection Corporation, Plaintiff-Applicant, versus Bernard L. Madoff Investment Securities, LLC, Defendant.

This case is being held in the United States Bankruptcy Court, Southern District of New York, Case Number Adversary Proceeding 08-01789 (SMB). The name of the witness is Bernard L. Madoff. At this time would the attorneys present in the room identify themselves and the parties you represent and then our court reporter, Denise Neal, representing Veritext Legal Solutions, will swear in the witness and we can proceed.

MS. CHAITMAN: Helen Davis Chaitman on behalf of a great number of claw-back Defendants. And, in fact, I'm taking the deposition. It's not the Trustee who's taking it.

MR. SHEEHAN: Right.

MR. GOLDMAN: Peter A. Goldman. I

represent Bernard Madoff.
MR. SHEEHAN: David J. Sheehan with Baker Hostetler, counsel to the Trustee.
MS. FEIN: Amanda Fein, Baker Hostetler, for the Trustee.
(The witness was duly sworn by the court reporter.)
MR. GOLDMAN: Keep your voice up.
BERNARD L. MADOFF,
having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MS. CHAITMAN:
Q. Good morning, Mr. Madoff.
A. Good morning.
Q. Irving Picard has argued to Judge Bernstein that you're not a credible witness and I want to ask you a few questions about that. At the time you confessed on December 11th, 2008 had you been indicted?
A. No.
Q. At the time you confessed was there a criminal investigation against you?
A. No.
Q. At the time you confessed was there an SEC

investigation against you?

A. No.

Q. At the time you confessed was there any limitation on your ability to transfer funds?

A. No.

Q. At the time you confessed was there any limitation on your ability to travel abroad?

A. No.

Q. So is it fair to say that you had the option of taking a couple of hundred million dollars and moving with your wife to Switzerland and living out your life in Switzerland the way Mark Rich did?

A. I'm --

MR. SHEEHAN: Objection to form. Let's get this geared up because I don't want to interrupt. I apologize. So I'm just going to say objection. When I say that, it means as to form. That's it.

MS. CHAITMAN: Okay.

MR. SHEEHAN: But just to preserve.

MS. CHAITMAN: Sure, sure.

MR. SHEEHAN: Okay. All right. I'll shut up.

MS. CHAITMAN: I'm going to rephrase the question because I was rudely interrupted.

(Laughter on the record.)
MR. SHEEHAN: I apologize for that. I apologize. Go right ahead. Go ahead.
MS. CHAITMAN: I'm kidding.
Q. (By Ms. Chaitman) Okay. At the time you confessed you knew who Mark Rich was; didn't you?
A. Yes.
Q. And did you understand that Mark Rich had escaped prosecution by moving to Switzerland?
A. Yes.
Q. And did you recognize that you could have done the same thing, just moved to Switzerland with Ruth with a couple of hundred million dollars and lived out your life?
A. Yes.
Q. Now, at the time you confessed the global economy had collapsed. Do you recall that?
A. Yes.
Q. Bear Stearns had collapsed in March 2008; isn't that true?
A. Correct.
Q. And Lehman filed in bankruptcy in October 2008?
A. Correct.
Q. And the stock market lost half its value

when Lehman filed in bankruptcy; isn't that true?
A. Just about, yes.
Q. And you had a lot of wealthy people who owed you about $10 billion; isn't that true?
A. Correct.
Q. So instead of confessing to a crime which would inevitably result in your spending the rest of your life in prison, why didn't you move to Switzerland or try to work out a negotiated liquidation of your business?
A. Well, first of all, I knew that I was guilty. I felt responsible. Secondly, I had made a decision that the best thing that I could do for the -- you know, to make restitution to my clients was to try and convince certain people that were responsible for creating my problem to threaten them with turning them in with their complicit behavior if they did not return the money that they owed me.
Q. Okay. And I just want to caution you. We're going to speak a little bit about the four families, but I don't want you to mention the names of any of the people.
A. Okay.
Q. Now, when you met with the U.S. Attorney's Office in December 2008, did you tell them the

complete truth about what happened?
A. Yes.
Q. Since that time have you ever been dishonest when you testified about what happened?
A. No.
Q. Now, as I just mentioned, you've testified previously about the four families who had been your clients from the 1960s on. And, again, I don't want you to mention the names of any of those four families, but I just want to ask you a question. Was there a period prior to 1990 when Annette Bongiorno backdated trades from members of the four families?
A. Yes.
Q. Was that done without the knowledge of the members of the four families?
A. No. They were aware of it. They had instructed her to do it.
Q. They instructed her to backdate trades?
A. Yes.
MS. CHAITMAN: Okay.
MR. SHEEHAN: Excuse me. What time period was that?
MS. CHAITMAN: Before the 1990s.
MR. SHEEHAN: Okay.

Q. (By Ms. Chaitman) Now, to your knowledge has the Trustee settled with each of these four families?
A. I believe so.
Q. Okay. You testified the last time you were deposed by me that the fraud did not begin until you began doing the split strike conversion strategy in 1992?
A. Correct.
Q. Now, was it, as Judge Bernstein used the expression, a light switch? When you started doing a split strike, did you stop buying any securities for the split strike customers?
A. No. I had started -- I had started buying -- doing the strategy for probably through 1993; but as more money came in, that's when my problem began because I couldn't put it all to work in the strategy. And I had committed that I would keep all the money working.
Q. Okay. I just want to say one thing. I have seen statements as early as July 1991 which seem to be in split strike. Are you saying that it wasn't -- I'd like you to give me your best recollection of when you stopped buying securities for the split strike customers.

A. Sometime post-'92. As I started, you know, I was still buying it in '92 and also through most of '93. After that, that's when I stopped buying securities for split strike.

Q. Okay. Now, you continued to have some customers who were in convertible arbitrage?

A. Correct.

Q. Did you continue so long as people were in convertible arbitrage, did you actually buy those securities?

A. Yes.

Q. Okay. So it was only in the split strike that you stopped buying the securities?

A. Correct.

Q. Okay. Do you derive any kind of benefit from your testimony as to when the fraud started?

A. No.

Q. Does it benefit anyone in your family?

A. No.

Q. If the Trustee claims you're lying as to when the fraud started, is there any conceivable benefit that you enjoy by virtue of that testimony?

A. No.

Q. Does this testimony benefit any of your family members?

A. No.
Q. Now, you testified that at some point in 1992 you leased the 17th floor of the Lipstick Building?
A. Yes.
Q. And you bought a separate computer system for the people you moved to the 17th floor; is that right?
A. Correct.
Q. And that was called the IBM AS/400?
A. Yes.
Q. Now, was the IBM AS/400 on the 17th floor linked to outside sources, like other investment firms or DTC?
A. No.
Q. Now, the computers that were used on the 18th and the 19th floors by the traders --
A. Right.
Q. -- were those Bloomberg terminals?
A. Well, we have Bloomberg terminals all over the firm, yes.
Q. Okay. Were the Bloomberg terminals linked to outside sources?
A. Yes.
Q. What outside sources were they linked to?

A. I can't probably tell you all of them, but they -- Bloomberg generally is linked to -- basically, Bloomberg terminal gets information from other information providers. They're also -- I'm not sure, but they're also linked to probably the depositories as well. They're not linked to other brokerage firms.

Q. Okay. Now, when you testified that Annette Bongiorno prior to 1990 had backdated trades for the four families, were those carried out on the AS/400?

A. Yes.

Q. Okay. But before -- before you bought the AS/400 in 1992, what kind of computer was she using that she would backdate trades?

A. We had other small like, you know, computers, what you would call them, just like, you know, what you would use at home, you know, word processors and, you know, NASDAQ terminals and things of that sort.

Q. They were not linked to outside sources?

A. No. They were not linked, right.

Q. Now, was it -- you testified last time, and correct me if my recollection is incorrect, but I think what you testified last time is that it was not illegal for you to sell short?

A. Correct.
Q. And that was because -- can you explain?
A. It's an obligation if you're -- if you're -- first of all, any brokerage firm can sell short, you know, just as any client can sell short. That's a typical way of doing business, you know. So you as a client could instruct your broker to -- to execute a short sale.
Brokerage firms more routinely go short stock to complete their customer orders at times if they don't have them in their inventory. If you're a market making firm like I was, you're obligated to honor your market, which requires you to go short, you know, at times.
So going short is a regular, every day business. A firm like ours, you know, regular trading inventory typically would have hundreds of millions of dollars, probably $500 million short all the time.
Q. Okay. But a naked short is where you're selling short but you don't own the security; right?
A. The definition of a short sale is naked. It means that you're selling something that you don't own at the current time.
Q. Okay. And as a market maker did you have

an unlimited right to sell naked shorts?
A. Correct.
Q. So was it illegal for you to send a statement say beginning in '94 or whenever you stopped buying the securities shown on the split strike, was it illegal for you to send a statement to a split strike customer that indicated that the customer owned certain Fortune 100 company stocks when you hadn't purchased them?
A. No. It was not illegal.
Q. Okay. So if it was not illegal for you to sell unlimited naked shorts, what was illegal about the split strike activity?
A. Well, what was illegal and what we did was not reflect our short positions to the clients on our audited financials.
Q. Because you had a debt to each client to whom you sold naked shorts --
A. Correct.
Q. -- in the amount -- the present value of those securities; is that correct?
A. Correct.
Q. And that was a fraud on anyone to whom you gave your financial statements; is that right?
A. Well, depends upon how you define fraud.

It was a bookkeeping violation. I don't think anybody initially would consider it a fraud. You know, that's -- well, I just don't know. I would say that it clearly was an SEC violation.

Q. And is it fair to say that the SEC reviewed the financial information that you submitted in your focus reports on a monthly basis?

A. Regularly, yes.

Q. And if you showed a massive debt to your customers, your investment advisory customers, what would they have done?

A. It would have been a violation. You probably would have been suspended.

Q. You would have been suspended as a broker?

A. Correct.

Q. Okay. So in your view was the crime simply that you didn't properly disclose the debt to your customers on your financial statements?

A. Correct.

Q. Now, you've testified this morning that you think either at the end of '93 or early '94 you stopped buying securities for your customers, and I just want to get a better understanding of why that occurred at that time. You had -- I think you said you made a commitment to your clients to put them in

this strategy?
A. Correct.
Q. And what happened at the end of '93 or early '94 that you could no longer do that?
A. The markets had gone into a -- into a slump because of a number of things, you know, starting with the Mideast Crisis at that time. So there was a lack of liquidity. This particular strategy that we used, the split strike strategy, requires certain market conditions to be able to execute it properly. And we didn't have those conditions.
So because I had committed when I took in the money from the clients, primarily they were hedge funds, I had made a commitment to keep the money working constantly. Because I couldn't do that, I started to short the securities, which was as I said, not a violation at the time I was shorting the stock. It only became a violation when I filed my financial reports.
I thought that would just be a temporary situation for the market to, you know, recover and improve and then I would have started doing the strategy. In the interim the money that the customers came in, I basically kept it located in Treasury bills.

Q. Okay. So you took the money --
A. Which is part of the strategy as well.
Q. Right. So you basically took the money that went into the 703 account?
A. Correct.
Q. Which was the investment advisory customers' money?
A. Correct.
Q. And you purchased Treasury bills with that?
A. Correct.
Q. And in the early '90s the Treasury bills were bearing an interest rate of about six percent; isn't that true?
A. No. They probably were -- you know, they were short-term T bills, so they were probably, you know, closer to three to four percent.
Q. Okay. And that three to four percent was money that was earned by the customers --
A. Correct.
Q. -- whose money you were using?
A. Correct.
Q. And, in fact, the statements reflected the ownership of those Treasury securities?
A. Correct. And they -- well, they also, you know, reflected the ownership of the securities that

I wasn't buying.
Q. Right. Now, in late 1993 or early 1994 was your business, you were operating at that point as a sole proprietorship; is that right?
A. Yes.
Q. Was your business insolvent?
A. No.
Q. At what point in time did you become insolvent? And when I say you, I mean your sole proprietorship or the limited liability company.
A. I would say probably in the early 2000s, maybe somewhere between let's say '98 and 2002.
Q. Okay. And what --
MR. SHEEHAN: Can I just -- before you get an answer, two things. One is I don't know what insolvency means.
MS. CHAITMAN: Oh, okay.
MR. SHEEHAN: I'm going to ask to define that.
MS. CHAITMAN: Okay.
MR. SHEEHAN: And I'm not going to interrupt you again because I'm just going to have a continuing objection to leading questions, which is you're testifying more than he is, but I don't care about that. Just objecting. All right.

Q. (By Ms. Chaitman) Okay, okay. When you say that your business became insolvent at some point between '98 and what did you say? 2000 --

A. 2002.

Q. Okay. What are the events that you're thinking about that --

A. Well, because I was also returning -- there were client -- part of the strategy was to return profits that were earned to clients. So in order to do that, I was returning money from the 703 account to clients and, therefore, I wasn't able to buy either the securities or the treasuries. So there was a deficit.

So because that wasn't reflecting the liabilities and I didn't have assets to back them up at some point, I would say that would be -- the firm would be insolvent.

Q. Okay. So would it be fair to say that the insolvency arose from the differential between what the investment advisory customers' money was earning in Treasury bills versus the return you were paying them?

A. Correct.

Q. Did your formation of the limited liability company in -- it became effective January 2001, did

that relate in any way to your feeling that your firm had become insolvent?

A. I realize that that -- yeah, that there were problems brewing, yes, I would say.

Q. Well, what motivated you to form a limited liability company since you had been operating as a sole proprietorship since 1960?

A. Well, I was always -- I had always been advised to incorporate since I started my firm. I never felt the need to do that because I was not worried about, you know, ever being in a situation that, you know, I would have any exposure. The firm was always successful and, you know, it just never really entered my mind.

So I just didn't do it, but then because of what was going on with the stock market, the market had -- had crashed in 2000 because of the -- there was the bubble of the technology stocks, so everybody became very nervous about the market in general.

So there was a rush to incorporate or go into an LLC type of mode. And the regulators had also sort of started recommending to the industry that everybody should basically do that.

Q. Now, Mr. Madoff, according to Mr. Dubinsky

the three areas of your firm functioned as totally separate legal entities, that is, market making, proprietary trading and investment advisory. Is that correct that each of these groups functioned as a separate legal entity?
A. No.
Q. Were the expenses for -- the operating expenses for each group paid solely out of the revenues generated by that group?
A. They were -- all the expenses were paid through a -- through the firm, but the money came out of an expense account that was held at Bank of New York.
Q. So there was one Bank of New York account which covered all of the say overhead expenses?
A. All the operations of the firm. There was a JP Morgan account. We referred to it as a 703 account. And that was exclusively used for client monies in and client monies out --
Q. Okay. And --
A. -- for the investment advisory side.
Q. Okay. So all of the rent, personnel expenses, general overhead was paid out of the Bank of New York account?
A. Everything. Salaries, everything.

Q. For all of the employees at first the sole proprietorship?
A. Right, right.
Q. And then all of the employees at the LLC?
A. Yes. It never changed, right.
Q. Okay. And is it fair to say that at times money went from the 703 account to the Bank of New York account?
A. Yes. There were some instances that -- that I used that, but the issue is because all of these clients had margin accounts because they were short securities, whether it be convertible securities or whether it be the split strike trades, their -- the assets of the client is fungible with the firm because the long positions, whether it be Treasury bonds or whatever, is the collateral for the exposure on the short side of the firm.
So there were sometimes where relatively small amounts of money, I think, in the late '90s went from the 703 account into the Bank of New York account to cover -- what was not, I don't think, understood in the Dubinsky report among a lot of other things was that customers have short positions. They're mark to market from the clearing corporation every day and short position being the

difference in the market. As the stock market goes up, the short position goes up. The customer gets a call which is called a margin call.

So typically the money would come from the customer account to meet those margin calls. So we had -- we had margin calls that we had to make to the clearing corporation, which all that which was done through the Bank of New York account.

So by taking the money from the client account, putting it into the Bank of New York account, that allowed us to meet the margin calls of the clearing corporation. That is typical of the industry.

Q. Okay. Now, I want to ask you something else since you've mentioned the margin. If you -- if someone had a margin loan and you bought stock for them --

A. Right.

Q. -- would that stock be segregated in a clearing or custody account for that customer?

A. No.

Q. Why is that?

A. Because margin, the whole concept of a margin account is the firm is allowed to use those securities to borrow money to cover, you know, what

the customer is requesting to be able to purchase securities. The brokerage firm also has to deliver securities if the firm that he sold it to for the customer who needs delivery.

So he has to go out and borrow securities. And to borrow the securities to make the delivery, he has to -- he has to borrow them from another brokerage firm. He has to pay them for those securities. So the only -- the only securities that are segregated for a customer are what's called fully paid for securities where there is no liability or debt involved in the firm.

Q. Okay. Now, you've explained that the fraud was in the split strike, but if you had an investment advisory customer who instructed you to buy a specific position for them and you gave them a margin loan to do that, did you actually execute those sales?

A. We always execute the sales. Whatever was reflected on the customer statement, we executed. We executed the sales to the customer. You know, we wouldn't have executed them in the market unless we were doing a strategy, unless we were also buying securities.

Q. Okay. But where a customer made a specific

instruction to you to buy a specific stock, are you saying that you always executed those instructions?

A. The customer didn't usually give us instructions. These accounts are handled basically as sort of discretionary accounts. So once the customer opened the account to go into this particular strategy, the firm had the -- had the, you know, allowance to be able to execute the strategy whenever he saw fit.

Q. No, but I'm thinking of customers who were not in split strike, investment advisory customers who had you as their investment advisor but they instructed you as to what stocks to buy and sell.

A. We didn't -- we basically did not do that kind of business.

Q. Now, in the government's deferred prosecution agreement with JPMorgan Chase, the government and the bank stipulated that during the period from 2003 to 2008 you maintained on deposit at JPMorgan Chase three to six billion dollars. Is that correct?

A. Yes.

Q. Did that amount -- was that only between 2003 or 2008 or had you done that earlier than 2003?

A. Well, there were certain -- we started

buying treasuries when we start the split strike conversions. So that would have been, you know, in the '90s.

Q. Okay. And to the best of your recollection at any given time how much investment advisory customers' money was held in U.S. treasuries?

A. Well, I would say basically the maximum that we had was between five firms we had about two-and-a-half billion dollars between Morgan Stanley, Lehman Brothers, Bear Stearns and Fidelity. Was that five firms? Four firms. And JP Morgan.

Q. Okay.

A. So I would say probably the maximum was probably about $6 billion held in treasuries.

Q. Okay, okay. Did it fluctuate or did you instruct your staff to maintain that amount?

A. No. It pretty much fluctuated depending upon the monies that came in and the monies that -- monies that came out.

Q. What percentage of the investment advisory customers' money was put in Treasury securities, if you can estimate that?

A. Well, I mean, the most we had -- I mean, the customer statements depending, you know, at the end was 60 some odd billion dollars.

Q. Not what the statements showed, but what you actually did.
A. What we actually did?
Q. Yeah. How --
A. I don't understand your question.
Q. Let me step back a minute. Were the people on the 17th, were any of the people on the 17th floor authorized to buy Treasury securities?
A. Yes.
Q. Who was authorized to buy Treasury securities?
A. Frank DiPascali, Eric Lipkin and a fellow by the name of Robert Romer.
Q. And they were -- what money were they authorized to use to buy the Treasury securities?
A. Whatever -- they followed the instructions of basically Frank DiPascali, who was the manager of that department. And the money, the money to buy the securities always came from customer money except for a small amount of treasuries or financial instruments that came from the operating operations of the market making proprietary trading side.
Q. Okay. So the money came from the 703 account, is that what you're saying, except for the --

A. For the most part, yes.
Q. Except for the money that came from the BNY account?
A. Right.
Q. Okay. Now, did you ever have a lock-in period like hedge funds would have which would prevent a customer from immediately demanding a redemption on their money?
A. No.
Q. Was there any period of time from the end of 1993 to 2008 when you were unable to honor a customer redemption?
A. No.
Q. Was there anytime between 1993 and 2008 when you felt that you couldn't redeem a customer's account unless you brought in new investment advisory customers?
A. No. Well, I would say during -- in 2008 probably that half the market was -- was collapsing. There would have been -- had customers requested money, I wouldn't have been able to do it, but no one had ever requested it.
Q. Okay. So, well, you did have significant redemptions in 2008?
A. Yes, at the very end in December.

Q. Okay. And prior to December 2008 --
A. But there was always -- there was -- you know, I never got an official request for redemption that I didn't have money to cover it to my recollection other than maybe the last week in December.
Q. Okay.
A. The last, you know, week that I was in business.
Q. Okay. So in the entire period when you were not buying the split strike securities starting say late 1993 or early 1994, had you ever received a redemption request where you thought oh, my God, I've got to bring in a new customer to have the money to pay this?
A. No.
Q. Did you actively solicit new investment advisory customers?
A. No.
Q. Why not?
A. Because the firm was in a position that we were always turning away investors. We never -- never solicited, you know, new monies coming in. As a matter of fact, we tried to return monies at times but met resistance with clients.

Q. We talked last time about the fact that you maintained clearing accounts with various banks?

A. Correct.

Q. And can you just review the banks with which you had clearing accounts?

A. Well, first of all, the firm itself was a self-clearing firm, which meant we had the ability to clear transactions. That was starting with the firm in 1960 through the very end, but most firms also had clearing arrangements with a number of banks to be able to service different types of the operations of the firm.

So the firm at one point had clearance facilities with -- initially with Meadowbrook National Bank, then, you know, also Commercial Bank of North America. There was then Irving Trust Company, Bank of New York, Bankers Trust, Manufacturers Hanover, Chase Manhattan Bank, Marine Midland Bank, Chemical Bank, JP Morgan Bank, Continental Illinois Bank. I think that pretty much covers it.

Q. M&T?

A. M&T, yes. M&T Bank.

Q. Now, what services did these banks provide to you?

A. Both loans, brokered and unbrokered loans, conversion, instructions to convert securities, drafts for election, you know, checking accounts, typical usually broker day loans, things -- you know, whatever, complete clearance facilities.

Q. Did they have custodial accounts where you maintained securities for customers?

A. Not that I'm aware of, no.

Q. Did you have custodial accounts with anyone where securities were maintained for customers?

A. Well, the -- we had securities at depositories, but they were not basically segregated for customers. That was the practice, quite frankly, that most brokerage firms never did any longer when securities -- as the industry progressed and you didn't have full physical securities in your own vaults.

We always had some securities in our vault we had, but those are from many, many years ago. They were a relatively small amount of securities that we were holding or that we bought, you know; but for the most part all the securities were commingled, which was typical for a firm that operated the way we did where you had customers that were short securities.

Whether or not we executed the transaction or not, they had opened up, you know, accounts, what would be deemed as a margin account, and that automatically allows you to commingle the securities.

Q. Okay. So you did have -- you did have physical possession of the securities with the margin accounts?

A. When we were buying them, yes.

Q. Okay. Now, you referenced the change from physical securities to electronic securities. Can you pinpoint when that occurred?

A. I don't remember any longer. I would say sometime during the '90s.

Q. Would it help if I told you that the Securities Investor Protection Act was enacted in 1970?

A. No.

Q. Okay. Now, when you were doing the convertible arbitrage, did you ever use a strategy called legging in?

A. Always.

Q. Okay. And can you explain what legging in means?

A. Legging in means that when you're doing a

strategy, whether it be for convertible securities or for the split strike, you go in and you don't buy everything typically in one day.

You start -- when the firm makes a decision to effect a strategy, whether it be convertible bonds or whether it be a basket strategy and a split strike where you're buying, you know, a portfolio of securities, the skill of the strategy is to being able to judge the market.

So you -- if when you're going out and buying securities, you would start buying it let's say on a Monday, Tuesday, Wednesday, Thursday. Typically you would buy it over a four-day period was basically what our practice is. And you would have different prices during the four-day period.

And all of our strategies use what's defined as an average price transaction, which means we would then take the average price that we bought stock during that four-day period and that would be the -- you know, we'd figure what the average was that we paid and then we would -- we would send the customer a confirmation on the last day.

So let's say on a Thursday, we started on Monday. And if you start -- to make a simple example, let's say you did it over four days and you

paid -- you started buying stock at 50 and you wound up buying it at, you know, up to 51 and you had an average of 50-and-a-half, you would -- you would place five-and-a-half.

Q. Was that unique to you or was this something --

A. No. That's typical for any firm that is investing in a strategy and treating -- you know, that's treatable to customers the same in a particular strategy.

Q. Now, you testified last time that Mr. Dubinsky apparently lacked an understanding of that strategy?

A. Well, he -- he must have. He must have not understood the strategy because his report failed to -- failed to state that. So, for example, where Dubinsky, when he was trying to analyze the prices that a customer paid in relationship to the market, he would look on whatever the trade date was on the confirmation.

And the trade date on the confirmation, for example, would be -- an example I use would be the trade date would be Thursday's trade date. If the stock had traded at 51 and on that day if that was the higher, the lower the stock and the average was

50-and-a-half for the customer, there would be a difference. So it wouldn't match up. Now, the customer, the customer confirmation always stated -- there was a legend on it that said that the transactions effected for the customer was an average price transaction.

So right away that would -- that would illustrate that he wasn't accounting for the -- for the fact that the transaction was an average price transaction.

The same thing would happen when you -- the same error he made when he accounted for volume because he would just look at the volume that occurred on the one day, on the date of the trade date, as opposed to the volume that happened on the four days. So, obviously, he's looking at the volume on one day when you should be looking at the volume on four days.

Q. Now, Mr. Madoff, Mr. Dubinsky testified at the Bonventry trial that the Trustee paid him over $30 million to do his report. Did he at any time ever seek to talk to you?

A. No.

Q. To your knowledge did he or anyone on his behalf ever seek to meet with you to discuss how you

operated the business?
A. No.
Q. Did anyone working with the Trustee ever ask you any questions about how your convertible arbitrage trades were done?
A. No.
Q. Did anyone working with the Trustee ever question you about any activity of the firm that predated 1992?
A. No.
Q. Now, you mentioned with respect to the purchase of Treasury securities with the investment advisory customers' money that the purchases were done through Bear Stearns, Morgan Stanley, Fidelity, Lehman Brothers and JPMorgan Chase?
A. Right.
Q. Were there also purchases done directly by Frank DiPascali, Eric Lipkin and Robert Romer?
A. Correct.
MS. CHAITMAN: I'm going to mark as Exhibit 15, which is the next number from our last deposition, a compilation of trade tickets. I have two if you each want one.
(Customers Exhibit 15 was marked for identification.)

MS. FEIN: Thank you.
MR. SHEEHAN: Thank you.
Q. (By Ms. Chaitman) Mr. Madoff, do you recognize what these documents are?
A. Yes. They're -- they're a copy of the Bloomberg terminal execution, meaning a trade that was executed through a Bloomberg terminal.
Q. Okay. Now, could this be a phony document?
A. No.
Q. Why is that?
A. Because we've got the ability to -- to create something like this.
Q. Is that because it's a Bloomberg terminal?
A. Yes.
Q. So if we look at the first one, this was the trader was Eric Lipkin; right?
A. Uh-huh.
Q. The date was September 26, 2002; right?
A. Uh-huh.
Q. And the -- it was the purchase of a Treasury bill with a cost of $998,461.94; is that right?
A. Yes.
Q. And this would have been purchased with money from the 703 account?

A. Yes.
Q. And it would have been held for the benefit of the investment advisory customers?
A. It would have been -- it would have been held at the firm for the benefit of the firm. We didn't segregate, you know, these securities.
Q. But if the money that was used to purchase this --
A. Uh-huh.
Q. -- came from the 703 account, would this show up, for example, on your focus reports?
A. This particular -- I don't know. I mean, the only trades that -- if it went through the Bloomberg terminal, typically that would show up -- I don't know if it would show up on the focus report.
It depends upon whether the trade was bought for -- there were some trades that were bought -- well, not if it was bought by the people that you mentioned. They only have the authority to execute trades for client accounts, not for the firm's account.
Q. Okay. So I'm confused.
A. These securities would be held either at -- typically it would be held at DTC or the Bank of New

York.
Q. Okay.
A. I mean, I can't tell from that. It depends upon where the trade would settle. Any of these Bloomberg trades that went through the Bloomberg terminal, it would actually be a money settlement for the transaction. Otherwise, you couldn't -- you couldn't do it.
Q. Okay. And that would be done through some ins --
A. It would be done through some -- typically through Bank of New York.
Q. Okay.
A. It could also have been done through JP Morgan as well in delivery.
Q. Okay, okay. You didn't have the ability yourself to clear Treasury security purchases?
A. Correct. We didn't have the authority to execute and clear.
Q. Treasury security purchases?
A. Right.
MS. CHAITMAN: Okay.
MR. SHEEHAN: Helen, just for the record, this seems to be -- you did call it a compilation, but since there were different productions, one is

AMF, another one is MAD Trustee, are you going to for the record tell us how this was put together or is that going to happen through your testimony?

MS. CHAITMAN: It's not, but I don't think that we have to take up his time to do that.

MR. SHEEHAN: Okay. We can do it later.

MS. CHAITMAN: Yeah, sure.

MR. SHEEHAN: All right. Just take care of it.

MS. CHAITMAN: They were all produced by the Trustee.

MR. SHEEHAN: Okay.

Q. (By Ms. Chaitman) If you -- these are not in continuous order. They didn't come from one place, but I'm showing you one that was done where the trader is Erin Reardon.

A. Ellen Reardon?

Q. Erin Reardon.

A. Erin, yes.

MR. SHEEHAN: What's the Bates number on that?

MS. CHAITMAN: It's MAD TEE 00118284.

MR. SHEEHAN: Okay.

Q. (By Ms. Chaitman) Did she work under Frank DiPascali?

A. Yes.
Q. And then two pages on there is one executed by Robert Romer?
A. Yes, same.
Q. He worked for Frank DiPascali?
A. Yes.
Q. Now, I'm skipping to a page which is Public-USAO 0960973. Can you identify why that format is different? Is that a different kind of transaction?
A. I don't know what this is. I mean, I'm not that familiar with it. It looks like a ticket for -- for a treasury, trading of a treasury, but it's actually from the Bloomberg terminals on here. So it must be --
Q. Okay. A different format?
A. -- a different format, right.
Q. Okay. And then on the next page, which is Public-USAO 0961013, it indicates that the trader is Frank?
A. Right.
Q. Is that Frank DiPascali?
A. Yes.
Q. And was it Frank's responsibility to maintain the portfolio Treasury securities for the

703 account customers?
A. Yes.
Q. Is it fair to say that he would direct the work of Eric Lipkin and Robert Romer?
A. Yes.
Q. And they reported to Frank?
A. Yes.
Q. Now, what was your purpose in instructing Frank to maintain a portfolio of Treasury securities up to $6 billion using the 703 account money?
A. We had to put the money somewhere, so if we were -- if it wasn't -- we would never keep the money in cash. So if we weren't buying the securities, we would put it into -- we would put it into treasuries.
Q. Okay. And did you have some thought that the three to six billion -- that was at JPMorgan Chase. That the up to six billion in Treasury securities was intended to protect any of your customers?
A. Well, if it was -- it was customer money, you know, yes.
Q. Okay. And in your mind over the years did you have customers, investment advisory customers that you wanted to protect more than others?

A. No.
Q. Were you concerned about protecting the European investors?
A. No.
Q. Why is that?
A. Well, because I was aware of the fact that, first of all, they really weren't my customers. They were customers of hedge funds. I was aware of the fact that the -- that most of the hedge funds, if not all of them, had structured product arrangements with banks that they were guaranteed, their principal was guaranteed and they were sharing in the profits of the transaction.
So it was as far as -- I mean, basically, they were all my customers. So I was obligated from a legal standpoint whether -- you know, whether I wanted to or not; but I would say that the -- I looked at the individual clients which would -- who had direct accounts with me differently than I did with the hedge funds, particularly because the hedge fund money that was pouring in was the thing that caused me the problem.
Q. What about the feeder funds? Are you putting them in the category of the hedge funds?
A. The who?

Q. The feeder funds?
A. Those are the hedge funds.
Q. Those are the hedge funds. Okay. So were you buying the Treasury securities then to protect the private customers as opposed to the hedge funds?
A. I didn't look at it, you know. I didn't isolate it one over the other because I knew I was basically obligated for -- you know, for all of it.
Q. Okay. Now, you said that you purchased Treasury securities with the 703 account money through the five institutions that you named?
A. Right.
Q. Bear Stearns, Fidelity, Lehman Brothers, JPMorgan Chase and Morgan Stanley --
A. Right.
Q. -- is that right?
A. Yes.
Q. Okay. It was only those five firms?
A. Yes.
Q. Okay. And did you maintain a consistent portfolio of Treasury securities at each of those institutions?
A. They were rarely sold unless they matured and then we repurchased, you know, different, you know, Treasury bills. Yes, I mean, for the most

part the monies in those accounts built and became, you know, more and more up to the maximum, which was, I think, $500 million pretty much in each account.

Q. So you maintained 500 million of Treasury securities at each of those five firms?

A. Pretty much, yes.

Q. Okay. And then in addition you had the portfolio that was purchased directly --

A. Correct.

Q. -- by the 17th floor people?

A. Right.

Q. Now, the market making and proprietary trading people were buying and selling securities; right?

A. Yes.

Q. And what kind of records were kept of the securities that were held by the firm as of say month end of each month? Was there a record kept of an inventory of securities that were owned by the firm as of the end of each month?

A. That the firm was long you're talking about?

Q. Yes.

A. Yeah. That was -- you know, you were

required to -- you had trading ledgers that reflected what was long by the market makers or the proprietary traders in the firm's investment account. There were trading ledgers and then there were -- there's what's called a securities record, stock record.

Q. Is it called a trade blotter?

A. There's trade blotters, yes.

Q. Is that the same thing?

A. Same thing.

Q. Okay. So if I -- if I --

A. Trade blotters basically reflect also monies -- monies in and monies out for the payment of the securities. The trading ledgers just shows the inventory long and short, and same for the stock record. Stock record would reflect where the securities are held.

Q. Okay. So I just want to get the terms. There are trade blotters?

A. Trading ledgers.

Q. And it's called a trading ledger?

A. Correct.

Q. Okay.

A. You know, which would -- trading ledgers would be for the market making, proprietary trading

and the investment account, investment ledger.
Q. Okay.
A. And then there's what's known as a stock record, which breaks down by each security.
Q. So each of those reports was done as of month end?
A. Daily.
Q. They were done daily?
A. The reports were effected daily.
Q. Okay. And did you -- through December 11th, 2008 did you maintain those records?
A. Yes.
Q. So they should have been there for the Trustee when he took over?
A. They would be, yeah.
Q. Okay. And were they all electronic records or were they paper records?
A. No. They were -- well, they were all done through computers.
Q. Okay. Who was responsible within the firm for generating these reports?
A. Well, depends upon, you know, where they were executed. Basically, Dan Bonventry was the operations director, so he had the final responsibility. The records themselves were

generated by the systems people. And depending upon whether it was generated by the Stratus system, which handled basically all the -- all the market making, proprietary trading side of the firm, or whether it was done by the investment advisory side, that would have been through the AS/400.

Q. Okay. But the investment advisory side would show -- would it show securities that actually hadn't been purchased? In other words, the split strike securities that weren't purchased, would they -- would that be listed on that report?

A. That's correct.

Q. Okay. So that's the trading ledger?

A. Right.

Q. Okay. So --

A. It would be -- it would be the customer ledger. There's a customer ledger.

Q. There's a customer ledger. So if I wanted to get an accurate picture of what securities the firm actually held as of any given day, what would be the best document to look at?

A. You would have to look at the -- the trading ledgers.

Q. The trading ledgers. Okay. Now, at JPMorgan Chase did you have an account or accounts

other than the 703 account?

A. Yeah. They had what they called a controlled disbursements account, which most brokerage firms maintain, so that the money was only transferred -- it was part of the 703 account, but it was so that they didn't take the money out of the account until the checks would hit from the checks that you issued it to. So it was like a flow of funds account.

Q. Was there a 509 account? Do you remember that?

A. I don't remember the number.

Q. You don't remember. Okay.

A. I mean, it was related to the 703 account.

MS. CHAITMAN: Okay.

MR. GOLDMAN: I'm going to direct this to the reporter. Do you need a break? Okay.

MR. SHEEHAN: I could use a bio break in about five minutes.

THE WITNESS: A what break?

MR. SHEEHAN: Bio break.

THE WITNESS: Bio break?

MR. SHEEHAN: Men's room.

THE WITNESS: Oh, okay.

MS. CHAITMAN: I'm going to mark as

Exhibit 16 a JPMorgan Chase account statement for the 703 account dated February 2001.

MR. GOLDMAN: I want to clear something up just so we know where they are.

MS. CHAITMAN: Yeah.

MR. GOLDMAN: The trading ledgers or customer accounts that we were talking about that you were just being asked about --

THE WITNESS: I don't understand the question.

MR. GOLDMAN: I just want to ask you some questions about where you could look at the end of the month to see what was held by the company.

THE WITNESS: Right.

MR. GOLDMAN: Okay. Were those electronically maintained?

THE WITNESS: Yes.

MR. GOLDMAN: Okay.

MR. SHEEHAN: That's all right.

(Customers Exhibit Number 16 was marked for identification.)

Q. (By Ms. Chaitman) Bernie, do you recognize this as a 703 account statement?

A. Yes.

Q. And if you'd turn to page four of

thirty-two?
A. Four of thirty-two?
MS. CHAITMAN: Yeah.
MS. FEIN: Is that the last Bates? It's 777; is that right?
MS. CHAITMAN: Yes.
THE WITNESS: Uh-huh.
Q. (By Ms. Chaitman) If you look at the entry on the 1st of February for $55 million and it says debit memorandum, reference purchase of ticket number. Do you see that? It's down here, 55 million?
A. Yeah, okay. Uh-huh.
Q. Do you know what that is?
A. It's a debit, so I'm assuming it's -- I'm assuming it's a check.
Q. Were you investing through JPMorgan Chase funds that you had on account?
A. Purchase of -- I'm not sure what the question is.
Q. Were you -- that $55 million, were you instructing Chase to invest that money in some interest earning security?
A. Oh, they -- we must have, but they -- I don't know if that was a sweep account. It was 55

million. What did they purchase? I can't tell from here.

Q. Well, you would have to look at the ticket, 001478.

A. Well, basically they wouldn't purchase anything unless we instructed them to do it, but they had -- all banks have what they call a sweep account, you know, where they swept the money that was cash that was in an account, they put it into a financial instrument so that it was an interest bearing account.

Q. Okay. And would you tell them what to invest in it?

A. No. They would do that themselves.

Q. Okay. If you'd just look up a little bit, there's a $13 million entry on February 1st?

A. Right.

Q. And it says --

A. Nassau.

Q. -- Nassau deposit taken?

A. Right.

Q. Attention, Tony Tiletnick?

A. Right.

Q. And it says to establish your deposit for purchase or sale of Chemical commercial paper?

A. Commercial paper, right.
Q. Right. Do you see that?
A. Yes.
Q. Who was Tony Tiletnick?
A. He was the -- around the cashiering department.
Q. Was he responsible for dealing with JPMorgan Chase?
A. Yes, uh-huh.
Q. Was he responsible to make sure that the money was invested so that it was earning money?
A. Yes.
Q. Okay. So was it your general practice to make sure that the money in the 703 account was always invested in securities so that it was earning money?
A. Yes. We would never keep it just in cash. That's what that -- that's why I'm referring to a sweep account. They would sweep their money into an interest bearing account.
Q. Okay. But if it's Chemical commercial paper --
A. Right.
Q. -- was that -- would that have had to be a specific instruction?

A. No. They would have -- they would do that. You know, well, I mean, Tony would tell them -- you know, Tony knew that they were investing it, but they were -- he, obviously, would have had a conversation with someone at the bank because at one point we told them not to use -- that we didn't want money going into Nassau because it was a -- it wasn't -- there was concern that, you know, commercial paper that was not, you know, in the U.S. was more at risk. Turned out never to be a problem, but it was an issue at one point.

Q. So where -- if I look at page nine of thirty-two, let me show you which one that is. There's a hundred million dollar debit memorandum on February 5th. Do you see that?

A. Uh-huh.

Q. It's Bates number 1458787.

A. Right, uh-huh.

MS. FEIN: Thanks.

MR. SHEEHAN: Yeah.

Q. (By Ms. Chaitman) So do you know what that would have been purchasing?

A. It would have -- if it's not a -- it, obviously, must have been a financial instrument. Whether it would be a CD or whether it be a

Treasury, I can't tell.

Q. Okay. Did Tony Tiletnick consult with you on a daily basis --

A. No.

Q. -- or did he have authority to make these decisions?

A. No. He had authority to do it himself.

Q. And in essence what were his instructions?

A. He was in charge of paying securities, you know, and settling up with the clearing houses.

Q. But in terms of the investment of deposits that were in the 703 account?

A. He would put whatever money that wasn't being -- he typically wouldn't buy treasuries himself. He was not someone that would normally buy treasuries. He would basically be involved with purchasing financial instruments like CDs or treasuries for the sweep account. They weren't typically large amounts. I mean by large amounts, they weren't billions of dollars.

MS. CHAITMAN: Okay. All right. You want to take a break?

MR. SHEEHAN: Sure.

THE VIDEOGRAPHER: Going off the record. This ends disc number one. The time is 10:20 a.m.

(A recess was taken and Customers Exhibit Number 17 was marked for identification.)

THE VIDEOGRAPHER: Back on the record. This begins disc number two. The time is 10:35 a.m.

Q. (By Ms. Chaitman) Okay. I've marked as Exhibit 17 a June 2001 statement for the 703 account.

THE VIDEOGRAPHER: Ms. Chaitman, your microphone.

MS. CHAITMAN: It's on.

THE VIDEOGRAPHER: Okay. Raise it up higher. It's being covered.

Q. (By Ms. Chaitman) And I'm going to just take a look at page seven of forty-four. Mr. Madoff --

MR. SHEEHAN: What's the Bates number?

MS. CHAITMAN: The Bates number is -- it ends --

MR. SHEEHAN: Oh, we have it, seven of forty-four. I'm sorry.

MS. CHAITMAN: Sorry.

MR. SHEEHAN: Okay. Go ahead.

Q. (By Ms. Chaitman) If you look at -- there's on June 4th at the bottom of the page, there's a $50 million debit?

A. Uh-huh.
Q. And it says purchase of slash sale of JPMorgan Chase. Is that commercial paper?
A. Yes.
Q. And then reference purchase of Chemical commercial paper?
A. Uh-huh.
Q. Okay. And then above that there's a $35 million debit memorandum for purchase of ticket and then it's redacted?
A. Uh-huh.
Q. Okay. And then above that it's 12-and-a-half million and it says Nassau deposit taken account?
A. Right.
Q. Can you describe what these are?
A. Those are just financial instruments that are invested so that the money is not just sitting there not earning any interest overnight.
Q. Okay, okay. And, again, was Tony Tiletnick authorized to do this on a daily basis?
A. Yes.
Q. Okay. And is it fair to say that the goal was to earn money on the investment advisory customers' money?

A. Yes.
(Customers Exhibit Number 18 was marked for identification.)
Q. (By Ms. Chaitman) I'm marking as Exhibit 18 a 703 account statement for October 2002. And Mr. Madoff, I'm going to open this to Bates number 576, which is page eight of fifty-five. Mr. Madoff, we're looking at a statement for October 2002.
And if we look at the entry on October 1st, there's a $279 million entry for -- it's a debit for the purchase of slash sale of JP Morgan commercial paper --
A. Right.
Q. -- is that right?
A. Uh-huh.
Q. And, again, was this done on -- by Tony Tiletnick under your instructions?
A. Correct, yes, yes.
Q. Okay. Now, were there times of the year when you tended to have more cash to invest than others or was this a general?
A. No, no. It was just -- was just a normal flow of funds.
(Customers Exhibit Number 19 was marked

for identification.)
Q. (By Ms. Chaitman) Okay. We'll go through a few more of these just because they cover different periods. This is -- will be Exhibit 19 and this covers the period of November -- of December 2003. And if you could look at page 41 of 65? Let me open it up for you.
A. Uh-huh.
Q. There are two entries for December 22nd where $50 million --
A. Right.
Q. -- is being invested; is that right?
A. Yes.
MS. CHAITMAN: Okay. I'm going to mark as Exhibit 20 the statement for December 2004.
(Customers Exhibit Number 20 was marked for identification.)
MS. FEIN: Thanks.
Q. (By Ms. Chaitman) Some of them I have -- I don't know why some of them I have four and some of them I don't, but if you look at page 35 of 63, which bears Bates stamp number 1486? Now, this is -- this is December of 2004 and do you see that there's a $30 million --
A. Right.

Q. -- Nassau deposit ticket?

A. Uh-huh.

Q. And then there's a $90 million purchase?

A. Right.

Q. Is it fair to say that those are again --

A. Uh-huh.

Q. -- investments?

A. Yes.

Q. So that the investment advisory customers were earning money on their money?

A. Uh-huh.

Q. And can you explain what the Nassau deposit is?

A. It's a CD, commercial paper of the -- I don't know how to describe it to you, but it's no different than JP Morgan. It's their branch in Nassau.

MS. CHAITMAN: Okay, okay. I've just got two more of these. I'm marking as Exhibit 21 a June 2007 statement from JPMorgan Chase.

(Customers Exhibit Number 21 was marked for identification.)

MS. FEIN: Thank you.

Q. (By Ms. Chaitman) And if you look on page 16 of 66 which bears Bates numbers 3654, this has an

entry for 50 million on June 6th, which is AIP overnight investment?

A. Uh-huh.

Q. Purchase of JPMorgan Chase commercial paper?

A. Right, uh-huh.

Q. And then the next one is 150 million and that's -- can you explain what that is? It seems to have an interest rate of 5.1407 percent; is that right?

A. Yes.

Q. Can you tell what that is?

A. You know, I don't know. I mean, it must be some sort of commercial paper of JP Morgan.

Q. Okay. And then the next entry on June 6th is 600 million and that's invested in short-term derivatives; is that right?

A. Where is that? Six hundred million?

Q. Six hundred million is -- it's June 6th.

A. It says JP Morgan short-term derivatives. I don't know what that is. It must be a -- you know, it must be some sort of commercial paper that is a financial instrument.

Q. Okay. And, again, is it fair to say that even in 2007 it was Tony Tiletnick who had handled

these investments?
A. I don't -- he died at one point. It might have been his brother, Walter Tiletnick, took over his job at one point. I think in 2007 he was already -- he had already died.
MS. CHAITMAN: Okay, okay.
MR. GOLDMAN: I didn't know whether you could hear with the microphone.
THE WITNESS: Uh-huh.
MS. CHAITMAN: I'm going to mark as Exhibit 22 a Bear Stearns statement dated April -- dated August 1, 2005.
MR. SHEEHAN: Twenty-three?
MS. FEIN: Twenty-two.
MR. SHEEHAN: Twenty-two. My fault.
(Customers Exhibit Number 22 was marked for identification.)
Q. (By Ms. Chaitman) Twenty-two. Can you identify this document, Mr. Madoff?
A. It's Bear Stearns' account statement.
Q. Did you -- what was the time period that you transacted business with Bear Stearns?
A. I transacted business with Bear Stearns, you know, from the time I started my firm over the years. So it was probably the 1960s on, you know,

through 2008.
Q. What kind of business did you do with Bear Stearns?
A. My market makers and proprietary traders traded with them, you know, on a regular basis. We executed trades for their customers for -- you know, we were a wholesaler, a market maker. So we did business with, you know, hundreds of brokerage firms, Bear Stearns being one of them.
Q. Is it fair to say that you did billions of dollars a year in business with Bear Stearns?
A. With Bear Stearns, yes, certainly. I mean, I think we probably traded a trillion dollars a year in general with Wall Street.
Q. With everyone?
A. Yes.
Q. Now, did you have more than one account at Bear Stearns?
A. No. We only had one -- well, I guess my wife had an account at Bear Stearns, you know, just a brokerage account for herself; but the firm, you know, only had -- they had Treasury -- an account where we bought Treasury bonds and then we had -- we executed trades on the exchanges through Bear Stearns because they were the clearing broker for

Cohmad Securities, which is a firm that we owned. We were the owners of that.

Q. For Cohmad?

A. For Cohmad.

Q. Okay, okay. So is this a statement for the securities account because on the second page it lists different securities?

A. Yeah, yes. It must have been -- yeah. This is the securities.

Q. Now, why would -- I mean, these seem to indicate that the transactions were sold, bought, received, delivered?

A. Uh-huh.

Q. Why would you have used Bear Stearns to buy securities instead of buying them yourself?

A. Because we're not a member of the New York Stock Exchange. Bear Stearns was. So if we bought an executed trade on the floor of the exchange and we weren't a market maker in that security, we would go through Bear Stearns. It could have been probably for like proprietary traders.

Q. Okay. Now, you've testified that you had two accounts at Bear Stearns. One was to hold the Treasury securities that were purchased and one was trading?

A. It would have been for proprietary and market making trading activity.
Q. Okay, okay. So if I wanted to get the evidence of the Treasury securities that were purchased with the 703 account money, I would have to get the statements relating to the Treasury securities?
A. Correct.
Q. Okay. And did you maintain those records?
A. Yeah. They would have been at the firm, yeah.
(Customers Exhibit Number 23 was marked for identification.)
Q. (By Ms. Chaitman) Okay. I'm going to mark as Exhibit 23 a document which was produced by the Trustee. Now, this document consists of a number of different pages. And if you would, Mr. Madoff, I'd like you to explain to me to the best of your ability what each of these pages represents.
A. Well, the first page is -- is an account for Cohmad Securities, which is an account -- which is a firm that we used to execute certain trades for Bear Stearns. If it was a -- if it was what's called a dot trade, a trade that they had a dot machine that went directly down the floor to Bear

Stearns, that would be a firm that -- that would be part of our market making or proprietary trading business.

Q. Okay. And the second page?

A. The same.

Q. Okay. So this is the -- the second page, which is Bates numbered ending in 14, says buy SEG?

A. Uh-huh.

Q. That's a stock; right?

A. Right.

Q. Okay. And then on the sell line it says hold PR something, OUS. Do you know what that is?

A. No.

Q. Okay. So is this a document that would have been generated by Bear Stearns or --

A. Yes. This is.

Q. Okay, okay. If you look at page 16, which -- do you recognize the handwriting on this page?

A. No.

Q. This is dated November 11th, '94 and the handwritten note says open account for Madoff. Do you see that? Here. Open account?

A. Oh, handwritten, yeah.

Q. Do you know what that is?

A. No. This looks like Miller, you know,

Tabak and Hirsch. It probably is probably an option account.
Q. Were they clients of yours?
A. No. They must have been -- this isn't Bear Stearns. This is the -- they're another broker-dealer --
Q. Okay.
A. -- that we must have done. It's an option account --
Q. Okay.
A. -- that was part of our hedging, probably our proprietary trading department.
Q. If you look at the third to the last page of this collection of documents --
A. Uh-huh.
Q. -- this is dated January 30th, 1985 and it seems to -- it says please install a restricted centrex line to existing Turret equipment at Bernard Madoff. Do you have any idea what that was about?
A. No. It's the communications department. So it must be, you know, one of numerous, you know, systems lines that we had to -- you know, we had hundreds of these types of lines to different brokerage firms so that we could route orders directly through them for our market making and

proprietary trading.
(Customers Exhibit Number 24 was marked for identification.)
Q. (By Ms. Chaitman) Okay. I'm going to mark as Exhibit 24 a statement of account, and I'm wondering if you can identify that. It bears a Bates number MS 236. Is this a Morgan Stanley statement? You can --
A. I'm trying. Everything seems to be redacted. I don't know.
Q. Right. I believe that the MS means it was produced to the Trustee by Morgan Stanley.
A. Okay. It probably is because it's Treasury bills.
MR. GOLDMAN: I think it is because if you look on the last page, they have a note about retirement accounts and review with your Morgan Stanley financial advisor. It's unlikely one bank is soliciting for another bank, so I think you can conclude it's a Morgan Stanley statement.
THE WITNESS: Uh-huh.
Q. (By Ms. Chaitman) So am I correct that this is showing that you had one-and-a-half million dollars in income from this account as of March 8th, 2003? Am I reading that correctly?

A. What page are you on?
Q. On the first page.
A. On the first page?
Q. It looks like -- it looks like Morgan Stanley is holding Treasury bills; right?
A. Uh-huh, right.
Q. Okay. And then it has a liquid asset fund of about 9.7 billion. Do you see that?
A. Nine point seven billion? No.
Q. No, million. Excuse me.
A. Nine million, right.
Q. Excuse me, excuse me. Yes, of course.
A. Yeah. Right. A million five hundred thousand dollars was the yearly income.
Q. Okay. To the best of your recollection did you have more than one account at Morgan Stanley?
A. Not for treasuries. We would have had only one account.
Q. One account for treasuries?
A. Right.
Q. But you would have had accounts for something --
A. Well, we also executed trades for Morgan Stanley.
(Customer Exhibit Number 25 was marked for

identification.)

Q. (By Ms. Chaitman) Okay. I'm going to mark as Exhibit 25 a document which is a JPMorgan Chase position summary. So Mr. Madoff, did you have a separate account at JPMorgan Chase which held the Treasury bills for the --

A. Yes.

Q. -- 703 account customers?

A. Uh-huh.

Q. Can you identify this document? Is it in a form that you've seen before?

A. I don't know what -- I mean, I typically wouldn't look at these statements, so looks to me just like a -- you know, a typical Treasury bond account where we bought treasuries. It lists all the activity as of April 2008.

Q. Okay. So if you had at JPMorgan Chase, you had about 2.8 billion, right, in Treasury securities?

A. Let me see. Yes.

Q. And then you maintained about 500 million at each of those other four institutions?

A. Right.

Q. So that would have been 2.8 and then it would have been 4.8; right?

A. Right.
Q. And then you had Treasury securities that were purchased directly by --
A. Right.
Q. -- Frank DiPascali?
A. Right. It would be at DTC. Those would have been -- no. Those would have been by -- those would have been bought by Frank.
(Customers Exhibit Number 26 was marked for identification.)
Q. (By Ms. Chaitman) Okay. I'm going to mark as Exhibit 26 what I believe is a Fidelity statement. Can you identify this?
A. Uh-huh.
Q. Is it a Fidelity statement?
A. Yes.
Q. So they use the trade name Premium Services?
A. Uh-huh.
Q. And this statement is dated January 31, 1999. So what does the statement show that Fidelity was holding in U.S. Treasury securities?
A. Looks like 205 million.
Q. Okay. And these were bearing interest of 5.25 percent and 5.375 percent?

A. Right, uh-huh.
Q. And was this purchased with money from the 703 account?
A. Yes.
(Customers Exhibit Number 27 was marked for identification.)
Q. (By Ms. Chaitman) I've marked as Exhibit 27 an August 31, 1991 statement of Clothmasters, Inc. Mr. Madoff, was Clothmasters an investment advisory customer?
A. I would assume so, yes.
Q. Okay. And this statement is dated August 31, 1991. Can you tell what trading strategy this statement reflects?
MR. GOLDMAN: I'm going to step out for a second.
MS. CHAITMAN: Sure.
THE WITNESS: This looks like a -- it looks like a split strike trade via equity. It looks like a basket of securities that were part of the split strike transaction.
Q. (By Ms. Chaitman) Okay. And as of August 31, 1991 were you actually purchasing the securities?
A. Yes.

(Customers Exhibit Number 28 was marked for identification.)
Q. (By Ms. Chaitman) I'm marking as Exhibit 28 a document which is called Account Canada. Can you tell me what this is?
A. Looks like it says Canadian dollars, so this must have been part of our proprietary trading, I think. I doubt whether this is -- I doubt whether this is a customer.
Q. So this is a record of investments that the firm made in Canadian dollars?
A. Right.
Q. Is this a report that was regularly prepared by your firm?
A. I don't know what this is. I mean, you know, I'm not familiar with this, so, you know --
Q. Okay. I don't want you to guess if --
A. No. I don't know.
MS. CHAITMAN: Okay.
MR. GOLDMAN: Do you need to eat?
THE WITNESS: Yeah. Whenever you're --
MR. GOLDMAN: They have your food outside.
THE WITNESS: Huh?
MR. GOLDMAN: I checked. They have your food outside.

THE WITNESS: All right. I'm okay for now.
MS. CHAITMAN: Do you want to? Do you want to?
THE WITNESS: No. It's all right.
MS. CHAITMAN: You sure?
MR. SHEEHAN: Whenever you're ready, just tell us.
THE WITNESS: Okay.
MR. SHEEHAN: We're not going anywhere.
THE WITNESS: I don't know how long she's going to be with this. What are you doing?
MS. CHAITMAN: Well, I --
MR. SHEEHAN: I think we're looking at all day.
CHAITMAN: No, but if you want -- do you want to take a break? Is this when you normally eat lunch? Why don't we --
MR. SHEEHAN: Why don't we just do it?
MS. CHAITMAN: Yeah.
THE WITNESS: Okay.
THE VIDEOGRAPHER: Going off the record. The time is 11:09 a.m.
(A luncheon recess was taken.)
THE VIDEOGRAPHER: Back on the record.

The time is 11:29 a.m.
Q. (By Ms. Chaitman) Just to review, Mr. Madoff, if I wanted to get a full picture of the Treasury securities that were purchased with money from the 703 account as of any point in time from say 1994 on when you say that the split strike, that's when you stopped writing securities for the customers, I would have to get the statements from Bear Stearns; right?
A. (Witness nods head.)
Q. The statements from Morgan Stanley?
A. Right.
Q. The statements from Fidelity?
A. Right.
Q. The statements from Lehman Brothers?
A. Right.
Q. And I would have to get the JPMorgan Chase statements like the one we looked at, which was the account that held the Treasury securities?
A. Correct.
Q. Okay. And if I wanted to get a complete picture of the securities that your firm held that were long positions that you actually held, I would have to look at the DTC records?
A. Correct.

Q. I'd have to look at -- were there other places that you held securities? Would I have to look at, say, your account at Bear Stearns?

A. You would have to look at the banks if there were -- if there were bank loans.

Q. Because if you borrowed from a bank, you would have pledged the securities to the bank?

A. Right. Typically they would be held at DTC, but they would be in the bank's account at DTC. They would be journaled over to the bank. So you'd have to look at the DTC -- you'd have look at the -- you would have to get that from the bank themselves because DTC would not give them to you.

Q. What banks did you borrow money from where you pledged the securities to the banks?

A. It could be JP Morgan. It could be Bank of New York, you know, depending on what period; but if you were looking at 2008 or 2000s, it would be typically Bank of New York, M&T, it could be JP Morgan. I think that's -- those are the banks that we used at that time.

Q. And if it's earlier?

A. You'd have to look at any one of the -- you probably couldn't get them, you know, but it would be the banks that I mentioned to you.

Q. All the clearing accounts?
A. Right, right.
Q. So if I wanted -- let's say I'm talking about 2003.
A. Right.
Q. I would have -- in order to determine what securities were held by your firm, I would have to look at the DTC records for each of the banks that you listed before?
A. Right.
Q. Plus your own DTC --
A. Right.
Q. -- correct? And would that give me a complete picture of all the securities you owned as of a given point in time?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. Now, again, I don't want you to mention any individual names, but you testified previously that the four families entered into hold harmless agreements with you?
A. Right.
Q. Do you recall who was involved in drafting those hold harmless agreements?

A. One of the partners at Price Waterhouse.
Q. Do you remember who?
A. Ed Kostin, Edward Kostin.
MR. GOLDMAN: Could you spell the name?
THE WITNESS: K-o-s-t-i-n. He's deceased now.
Q. (By Ms. Chaitman) And, again, I don't want you to mention any names, but were the hold harmless agreements signed by members of all the four families?
A. Yes.
Q. And what was the total amount of the debt that the hold harmless agreements obligated the four families together to pay you?
A. Well, it varied depending upon the fluctuation of the -- of the securities because the hold harmless agreements basically stated that they were holding me harmless for any loss involved in the naked part of their securities because of the short positions that had been maintained. So it could have -- probably was a maximum of probably I would say at one point probably $9 million -- $9 billion.
Q. Okay. As of December 11th, 2008 do you have any sense of how much it was?

A. As of when?
Q. December 11th, 2008.
A. I couldn't give you an exact figure. You know, the --
Q. Don't mention any names.
A. Not counting the 6 billion, there was one debit balance of 6.3 billion.
Q. Okay. So one person had a -- was that a margin loan?
A. Yes.
Q. So ones customer had a margin loan of six billion?
A. Right, right.
Q. And then --
A. Then I would say the others were probably -- there was probably an additional $5 billion in exposure that they caused me.
Q. Okay. So it was approximately $11 billion at the time you confessed?
A. Approximately, yes.
Q. Okay. Now, Mr. Madoff, you've testified that the investment advisory fraud did not begin until either late 1993 or early 1994. Are you aware that David Kugel testified that the fraud began in the 1970s?

A. Yes.
Q. Mr. Kugel testified at the Bonventry trial that in the 1970s he gave Annette Bongiorno arbitrage trades for the accounts of Stanley, Chase and for Avellino and Bienes. Were you defrauding Chase and Avellino and Bienes in the 1970s?
A. No.
Q. Did you read Mr. Kugel's testimony?
A. Yes.
Q. Do you think it's accurate?
A. No.
Q. Can you explain why?
A. First of all, I think that --
THE VIDEOGRAPHER: Microphone, microphone, microphone.
MS. CHAITMAN: You took care of the microphone.
MR. GOLDMAN: Want me to remove the microphone? Sorry.
MS. CHAITMAN: I'm sorry, Mr. Madoff.
THE WITNESS: I guess the best way to describe -- from what I've been able to piece together from the -- what I've read from the testimony and what I've been told and what I've seen is that this so-called smoking gun I would refer to

it is that David Kugel, who is one of my convertible bond traders, used to -- at our -- at my request used to generate a convertible bond formula that he would give to either Annette Bongiorno or Jodi, all right, that would lay out what the proper conversion ratio was on a particular convertible security.

In other words, it was a formula that he would write on a scrap of paper that would say MCI convertible bond would be bought 100 bonds, you would short let's say a thousand shares of stock at a certain price. And they would take that formula and they would use that when they were going to now generate a trade for a client.

All right. Now, that was so that they -- because they were not traders, they were not familiar with what the proper conversion ratios were. All right. So typically what would happen, the step used to be if Annette would come to them with a convertible bond and say okay, I have a million dollars worth of convertible bonds, that typically would be a million because we traded in much larger numbers.

So she would say there's $10 million available to be invested in convertible securities. What securities would you recommend that would put

for the customers in? All right. So he would pick out a security that we were trading and he would give him the correct formula. Once they got that formula, that scrap of paper, the next step would be to go and search our trading records, which would be what the market maker or the firm's investment account bought and sold over a period of let's say for four days.

And then they would -- he would by running a run of what we bought and sold, then Annette or Jodi, not David, you know, Annette or Jodi would look through the trading records and pick out a certain number of shares in stock and they would come up with an average price and the appropriate number of shares.

All right. So this David Kugel had no access to any of those records. He wouldn't be able to do that. He was just giving them -- he was just giving them what the correct formula would be.

So by -- for some reason the Trustee, all right, because he had this piece of paper which they showed me when they first came down here years ago and asked me what it was, I told them it was a formula, exactly what I just said. They determined from that that David was generating the trade and

that we weren't actually buying. He was just making up the trade, which I laughed at at the time because it didn't make any sense, you know, for him to do that. He couldn't possibly generate the trade because he had no access to the records to pick that out. He was just looking at one trade.

That is why -- and that was why Dubinsky, you know, you know, did not have the -- couldn't match up the number of shares or the price properly. So David's testimony -- and I don't know why he would even say that. I don't think that he would -- if he believed that he was actually generating a trade, I can't believe that he would even think that he was generating a trade because he knows that.

I mean, it just didn't make any sense. So either he was -- either the Trustee or whoever it was that was determining that, you know, just didn't understand it, which is probably the most likely situation or they were just trying to create a situation. Just doesn't make any sense.

And anybody that if you call anybody in for the industry, another person that ran a trading desk that was familiar with how you did these types of transactions would tell you the same thing. I mean, it made absolutely no sense.

Q. (By Ms. Chaitman) Now, when you confessed you weren't in the process of negotiating a plea agreement; right?
A. No, no.
Q. When David Kugel gave his testimony --
A. Uh-huh.
Q. -- he had negotiated a plea agreement; right?
A. From what I understand, yes.
Q. So he had to give the prosecutor something that the prosecutor wanted; right?
A. I don't know. It looks like it. I mean, I just -- you know, I don't think David Kugel was a -- you know, a devious type of person. David Kugel was not a good communicator. I mean, he was known in the firm as having a very hard time telling anybody anything. Nobody ever wanted to speak to David Kugel. He was a very nice guy and he was actually a talented trader himself, but he could not communicate with anybody.
I mean, and so that's the only thing I can think of is he didn't understand the question, he got nervous. I just don't know, but it made absolutely -- it made absolutely no sense, his testimony.

And another example of this was there was a testimony by Irwin Lipkin, all right, about -- you know, first of all, you have to understand that the only one that ever saw a completed focus report in our firm or that ever signed a completed focus report was me. Nobody -- nobody in our firm knew what the actual P&L was. The traders -- and this is not by accident.

In other words, the securities industry has very strict requirements so that there's no conflict of interest between market makers, the trading department and so on. You're required to keep your records separate.

The trade -- the market makers are not allowed to see another market maker's, you know, trading positions or P&L. As a matter of fact, you have to have supervisors that are different. For example, my brother -- my one son was in charge of the market making department. The other son was in charge of the proprietary trading department. They had to be separate.

And you couldn't have a system -- the traders are not allowed to see what this other trader has a position of because of what they call Chinese walls between your market making, your

client business and your proprietary trading department. The -- now, when do our -- when a firm like ours that is a market maker and is doing an arbitrage business, whether it be split strike or whether it be convertible bonds and is trading baskets and options and all sorts of hedging strategy, which is what our firm specialized in, when you do -- when you prepare your financial reports, your focus reports at the end of any month, you are allowed to net all of your positions.

So, for example, if you have -- in our firm we could have ten traders trading the same security. So some traders would have long positions in IBM. Some would be short positions in IBM. Some would have option positions on in IBM. What you have to do at the end of every month is you net all the positions, the option positions, to come up with a net exposure or net position.

So you could have, for example, one trader may be long a thousand shares. Another trader is long -- is short 500 shares of stock so that the net would be 500 shares. All right. The person that instructs -- there's one person that instructs, you know, how you do all of this. Now, Irwin Lipkin even before he retired was very -- was not the most

efficient person. Irwin Lipkin started with me when he first came out of the Army, but as the firm grew, as the firm became more and more sophisticated and was trading in the old strategies, it was beyond Irwin Lipkin's grasp, which was fine because he was a bookkeeper.

He only had to know specific things. At the end of each month when you had to net all these different positions, Irwin Lipkin didn't do that. So what would happen is if Irwin Lipkin and the records that he was looking at showed a thousand shares of stock but didn't -- he wouldn't know what the rest of the firm's were. So somebody had to net all of this out.

And it was a very complicated procedure and each firm depending upon the type of business you had had certain what they called no action letters from the SEC, which told you how you could -- you know, how you could handle each security.

And as a matter of fact, because I was the chairman of the trading committee for the industry, I had to work with the SEC when we formulated all of these different regulations and rules. So I was aware of the fact that the typical accountant or lawyer, for example, would not be familiar with any

of that. So I was not the least bit surprised that, for example, Dubinsky's errors that he had because he, obviously, was not that familiar with how -- you know, how you did this. Now, it doesn't mean you couldn't find out.

If you went -- if you got someone that really was familiar with all of these things, they would be able to understand that; but if you ask the typical accountant because, look, I worked with every major accounting firm in the country, you know, over the years. So I was familiar with what they did, what they understood and what they -- it's not surprising. It's a typical problem in the industry.

So David Kugel's testimony as far as I'm concerned as with Annette and as with any of these people in my firm, whether it be Enriqua Pitz or anyone else because I read all of their depositions. And, you know, none of that was really valid because they were looking at only what their specific job was. They didn't know what the rest -- they weren't familiar with the whole picture of the firm.

The only ones that would know that would be Dan Bonventry in my firm, who was the director of all operations, or myself. It wouldn't have been

David Kugel. It wouldn't have been Enriqua Pitz and so on.

Q. Did you believe that the focus reports were accurate prior to 1994 when you stopped buying the split strike securities?

A. Yes. And you see, you're using the '94, '93, '92, so I want to make sure there. I said that the fraud began in '92 because that was when we weren't completing all of the transactions in this split strike. All right. There was some -- there were some transactions in the split strike done, you know, through 1993.

All right. But I'm not comfortable saying that everything was done -- was done -- I'm comfortable saying that everything was done correctly, you know, prior to '92.

Other than the fact there was some back trading of -- of customer transactions for the accounts, for the four large accounts that started like in 1990, that was -- because of what happened was after the crash in 1987, the four big clients, you know, forced me to liquidate some of their positions. And that's when the hold harmless agreements started.

Q. Okay. But --

A. Focus reports were accurate because that wouldn't have affected the focus reports anyhow. The focus reports were accurate through 1992 for sure.
Q. Through 1992?
A. Yes.
Q. Okay. So I know it's a long time ago and I don't want you to say anything unless it's your best recollection, but you testified earlier today that you were doing the split strike trades until late 1993 or early 1994?
A. Right.
Q. But are you unsure of it? I mean, do you --
A. No. I was -- I didn't do it for all of the clients, you know. That's what I said. There were some clients that I did do the trades through 1993 for.
Q. Is there any way that we could determine now which clients you did the trades for and which ones you didn't?
A. No. I couldn't remember that for sure.
(Customers Exhibit Number 29 was marked for identification.)
Q. (By Ms. Chaitman) Okay. I'm up to

Exhibit 29. I'm handing you what I've marked as Exhibit 29, which is an appendix to Mr. Dubinsky's report in which he lists the documents that he considered. Have you seen this document before?
A. No.
Q. Now, you've testified that Mr. Dubinsky did not interview you and no one on his behalf interviewed you; is that right?
A. Yes.
Q. Okay. And if you look at page eight of this document, it lists a number of people who have been -- whose deposition transcripts Mr. Dubinsky said that he read. Can you look through this list and tell me if any of these people -- it begins on the bottom of page eight --
A. Uh-huh.
Q. -- and then it goes on to page nine. Can you look at these names and tell me if any of these people would have known how you executed the convertible arbitrage trades in the 1980s?
A. You're looking at the depositions you're saying?
Q. Yeah. The names of the people. Do you recognize any of these people as people who had knowledge about convertible arbitrage trading from

the 1980s?
A. None.
(Customers Exhibit Number 30 was marked for identification.)
Q. (By Ms. Chaitman) Okay. Now, I'd like to mark as Exhibit 30 an August 20th, 2010 letter that was written by Scott Garrett to Stephen Harbeck and then a September 7th, 2010 letter from Mr. Harbeck to Scott Garrett, which is the response. I'll just have to find the one that I marked up. Just give me one second. I should have one more of these. Let me just see.
MS. FEIN: That's all right. We'll share.
MR. SHEEHAN: It's all right. Go ahead.
MR. GOLDMAN: This may be the marked up one.
MS. CHAITMAN: Oh, yeah. Thank you.
Q. (By Ms. Chaitman) Have you seen this document before?
A. No.
Q. If you'd be good enough to turn to page 18? And the numbers are on the top of the left-hand side of the page. The numbers are right up there.
A. Uh-huh.
Q. SIPC is telling Scott Garrett that you had

all together -- you had the 703 account, you had two custody accounts at JPMorgan Chase and you had an additional 127 accounts. Do you see that?
A. Right.
Q. Does that sound accurate to you?
A. A hundred and twenty-seven accounts why?
Q. Held by -- I'm reading from the top of the page. It says in addition to the Madoff 703 account and the two BLMIS custody accounts held at JPMorgan Chase as discussed in response to section two, question 1(a) above, an additional 127 accounts held by Madoff, BLMIS or other Madoff-related entities have been identified to date as a result of the investigation.
A. Well, I'm not sure which accounts he's referring to when he says 127 accounts. What is that? Customer accounts or what is it?
Q. Accounts in the name of your firm, either you or in the name of either you or BLMI.
MR. SHEEHAN: Helen, it might be a good idea if Mr. Madoff read question to question that's being answered here, the page before.
MS. CHAITMAN: Sure.
MR. SHEEHAN: It might be a little bit helpful.

MS. CHAITMAN: Sure.
THE WITNESS: I'm still confused as to what the question is. I don't know. Maybe it's just me right now, but I don't -- when he's talking about how many accounts, he's talking about -- what is he talking about? Customer accounts or accounts we had at other brokerage firms or what?
Q. (By Ms. Chaitman) Well, the question was, and I'm reading from the bottom of page 17, if for the same period, which is --
A. Right.
Q. -- December 1998 through December 2008, Madoff, BLMIS or other Madoff controlled businesses had other accounts at U.S. or foreign banks or other financial institutions provide annual balance data for these accounts?
A. Okay. Well, again, if he's talking about accounts that we had, you know, if he's talking about that we had -- for example, if the Union Bank in Switzerland handled an account for a hedge fund, they may have had ten hedge fund accounts because they have been the custodian for those accounts. As far as we're concerned, we never had an account with these entities. So again, it depends on how you define we have an account.

We trade for -- we had -- we were hooked into hundreds of other broker-dealers, whether it be Charles Schwab or Merrill Lynch or Fidelity. You know, we didn't have a -- we don't consider that we had an account there. We did business with them, so we had transactions that went through that. We were executing Charles Schwab's customers' accounts but, you know, Charles Schwab was our customer, not a customer of Charles Schwab.

Q. Okay.

A. So I don't know --

Q. Is it fair to say that you don't believe that you, Madoff or BLMIS maintained 127 different accounts?

A. No, no. Again, it depends on how you define an account. I mean, we had hundreds, you know, of accounts. We had much more than 127 accounts depending upon what your definition of an account is. We did 10 percent of all the trading in the United States.

So, you know, we had -- we transacted five or six hundred thousand transactions every day, you know; but as I say, if you were a customer of Fidelity or Charles Schwab, you had an account there. All right. You weren't my customer.

Fidelity or Schwab was my customer. Now, they did business with us, Fidelity. We don't consider that we had an account with them.

Q. Right.

A. Because when we executed transactions for them, those transactions went through the clearing corporation. They were settled every day. We didn't keep money at Fidelity. They didn't keep money at our account. Those all went through the clearing accounts.

Now, they would say that they -- they could say they have an account with us because they did business with us. So they would have a -- they would show that -- what business they did with Madoff on a particular day the same way that if you were a customer of ours, Sean Jones, it would say you have an account with us; but that's not what a firm --

Q. Right.

A. So I don't know exactly how they're defining an account.

Q. Okay. If you look at the back of the document and you go in one, two, three, four, five -- let's see. From the back of the document six pages, you see you get to this from the back of the

document. You've got it.
MR. SHEEHAN: Okay.
Q. (By Ms. Chaitman) You're in the wrong document.
A. Oh, I'm in the wrong --
Q. That will make it even harder.
A. No wonder why you people charge $700 an hour.
Q. Okay. Sorry to confuse you.
A. Uh-huh, right.
Q. So these are -- this lists three Bank of New York accounts; right?
A. Right.
Q. One was for you and Ruth and then one was just for you and one was for BLMIS; right?
A. Right.
Q. And then there's a Bankers Trust account in your name?
A. Uh-huh.
Q. Was that used for the firm?
A. Yes.
Q. Okay. And there was a Barclays account?
A. Right.
Q. There were two -- actually, three Barclays accounts; right?

A. Uh-huh.
Q. One Bear Stearns account?
A. Right.
Q. One Fidelity account?
A. Uh-huh.
Q. One M&T account?
A. Right.
Q. And one Morgan Stanley account?
A. Right.
Q. Okay. Now, this is captioned Madoff related accounts, year-end balances and annual earnings accounts with transfers to and from the Madoff 703 account. Do you see that in the upper left-hand corner?
A. Uh-huh.
Q. So these were -- is it fair to say that these were all accounts which received transfers from the 703 account?
A. If that's what it says, yeah.
Q. Well, do you recall -- I mean, you've testified that Treasury securities were purchased with 703 account money by Fidelity, Bear Stearns, Morgan Stanley and Lehman; right?
A. Uh-huh.
Q. And Barclays is Lehman?

A. No. Barclays is Barclays.
Q. Well, if you look at the entry for Barclays, underneath it says Lehman?
MR. SHEEHAN: Could Lehman -- I'll stop.
THE WITNESS: Okay. I mean, Barclays we use -- Madoff Securities in London cleared their transactions through Barclays.
MS. CHAITMAN: Okay.
THE WITNESS: So but I don't know what Lehman did with Barclays. They may have used Barclays as well.
Q. (By Ms. Chaitman) Okay. When money was transferred from the 703 account to MSIL in London --
A. Uh-huh.
Q. -- was that money used to purchase securities?
A. It was used to purchase usually treasuries.
Q. From -- by MSIL?
A. Right.
Q. Okay. And were those treasuries also held for the benefit of the investment advisory customers?
A. Probably.
Q. Do you remember approximately how much MSI

held in Treasury securities?
A. No.
Q. And for us to determine that, we'd have to get the Barclays Bank statements, is that -- for the Treasury account?
A. Correct.
Q. If you look on the next page, which is page 19 -- let me help you. Under paragraph two, what appears in bold is the question that was asked by --
A. Right.
Q. -- Congressman Garrett. It said during the period 1992-2008 when Madoff was actively pursuing his Ponzi fraud, he was engaged in market making and proprietary trading. For each of these years provide data on trading volumes and the annual gross and net revenues from this trading activity.
And then the answer is a table, which SIPC says the table below includes annual revenue, net income and trading volumes as reported in the focus reports filed by Madoff with regulatory authorities. Madoff focus reports were available back to 1983.
A. Uh-huh.
Q. Was this information on the focus reports accurate after 1992?
A. I assume so. The revenue, yeah.

Q. So, for example, where it says average monthly reported trade ticket executions, do those numbers look accurate to you?

A. It would be under focus reports, yes.

Q. Okay. And would the focus reports accurately reflect the monthly trade ticket executions?

A. Uh-huh.

Q. And what -- if you can answer this, what was the average volume of each trade ticket? I mean, I assume you wouldn't do a trade for three shares of IBM?

A. No. These would be -- this is not -- I'm assuming these are not customer transactions. These are -- on the focus reports these were just reflecting the market making proprietary trading business.

Q. What you were doing for your own account?

A. Right.

Q. Right.

A. Yeah. So --

Q. Do these numbers look accurate to you?

A. I would -- I would assume so. If we run the focus reports, the focus reports were accurate all the time.

Q. So what would -- if there's a -- if you can quantify this. If you can't, just say you can't, but what would be the average number of shares that you would do on one ticket?

A. On a ticket?

Q. Yeah.

A. It varies. I just -- no way to be able to tell you that. I know how many trades they were doing. They were doing, you know, anywhere from a low of 250,000 transactions a day to 600,000 transactions a day. I mean, you know, how the shares were, you know, I don't -- you know, I don't know. I didn't pay attention to that.

Q. Okay.

A. Why is it relevant?

Q. I'm just trying to get a sense of the volume. In other words, let's say if we take in 1983 you did a reported -- average monthly reported trade tick at executions was 8,135.

A. Well, let me put it to you this way. The industry kept records, transactions of how many transactions we did because they were reported, you know, to -- you know, to the NASD. I mean, it was reported all over the industry basically. These were not numbers that we generated. That went

through the systems, the clearance and settlement systems and the reporting, trade reporting systems that we did anywhere from typically of a low of five to ten percent of the actual number of transactions were executed in the United States. That's not something that I made up.

That was something that's been reported all over the -- all over the industry. It's been reported by the NASD and the SEC. I mean, by anybody's scope it was a huge amount of business.

As a matter of fact, when we -- when we developed this Primex trading system and my partners were Goldman Sachs, Merrill Lynch, Lehman Brothers and Citicorp, the five -- all five firms that were the partners in Primex handled 50 percent of all the trading in the United States. Again, this is not numbers that we generated. This is what the industry reported.

Q. Okay. But if I had been your customer, would you have taken an order from me to buy five shares of IBM?

A. No.

Q. So what was the low --

A. We didn't -- if a customer called us up to buy stock for them, we never took an order. In

other words, you couldn't as a customer, our firm policy was to not handle a typical retail order for a client. We either -- you either had to be a broker-dealer or a bank to be a client of Madoff or if you were a customer, you had to have -- when you opened an account, you had to have a minimum of 500,000, which is at the very earliest $500,000 in the account. Typically it was then 2 million. That was if you were an individual client.

So but if you called us up and you said you want to buy 20 shares of IBM or you want to buy a thousand shares of IBM, we would not do that order. If it wasn't -- the only customer business that we did was where we managed the entire account and we made the decisions.

Q. Okay. Now, if you'd look on page 23 at the bottom of the page, the question was how many accounts under consideration for avoidance action were established with Madoff prior to the inception of the Ponzi scheme?

In making the net investment method determination net equity from these accounts, has the Trustee used any of the pre-Ponzi disbursements? If so, provide details, et cetera. And the response says based on the Trustee's investigation and upon

review of the earliest records available to him, the Trustee has found no evidence indicating that the BLMIS investment advisory business has been operated as anything but a Ponzi scheme.

A. Right.

Q. Now, did anyone on behalf of the Trustee ever talk to you about the trades that you did in the 1980s?

A. No.

Q. Did the Trustee ever disclose to you that he, in fact, had some trading records from the 1980s?

A. No.

Q. Now, when SIPC is using here the phrase Ponzi scheme, if you accept for a moment that a Ponzi scheme is a nonexistent business in which people invest where the sole source of paying returns on their investments is investments from new investors --

A. Uh-huh.

Q. -- on that definition was the split strike ever a Ponzi scheme? In other words, did you ever need new cash from new customers in order to redeem other customers?

A. No.

Q. Did you ever need new cash from new customers to pay the earnings that were reported on the statements?

A. No. Let me make a statement that I have never to my recollection ever had a conversation with a Trustee, ever. The Trustee never met with me, never spoke to me, never asked me anything from the date of my arrest until currently. I've had meetings with the attorneys when the attorneys came down here after, you know, I don't know whether that was 2010 or some year in that, but there was nothing; but the Trustee, the only time I ever saw the Trustee was at my proffer meeting with the SEC.

Q. In December 2008?

A. December of 2008. And as far as I recall, he never asked me anything and I never said anything to him.

Q. Okay. But did anyone from the Trustee's law firm --

A. No. The law firm, yes. They came down at one period of time. David Sheehan could -- was present.

Q. Okay. But did they ever ask you whether you actually executed the trades that were done in the convertible arbitrage strategy?

A. I don't think they ever asked me that. The only conversation I had with them about trade at all was the David Kugel scrap of paper that I mentioned before.

Q. Okay, okay. Did they ever ask you exactly when the -- when you stopped buying the securities for the split strike?

A. No.

Q. Did they ever ask you whether you needed the money from new investors in order to pay old investors?

A. No.

(Customers Exhibit Number 31 was marked for identification.)

MS. CHAITMAN: I'm up to Exhibit 31, and this is the expert report of Bill Feingold. That's okay.

MR. GOLDMAN: I'll take it easy.

Q. (By Ms. Chaitman) Okay. Have you seen this document before?

A. Yes.

Q. Okay. Do you know Bill Feingold?

A. No.

Q. Did you ever hear about him?

A. No.

Q. I'd like to go through the substantive portion of this report and I'd like you to give me your insights on it; okay?
A. Uh-huh.
Q. So if you'd be good enough to turn to page two?
A. Uh-huh.
Q. And if you could just read paragraph 12 and then if you have any comments on that, I'd like you to tell me what they are.
A. Yes.
Q. Okay. Can you tell me what they are?
A. What? What did you ask me?
Q. Did you have any comments on this? Do you -- do you --
A. Yeah. I think, you know, he pointed out, you know, the fallacy of what Dubinsky used, made statements about volume and so on. He's criticizing -- I think there were 41 points that he made that Dubinsky was incorrect in his analysis, which was basically very similar to all my comments when I analyzed the Dubinsky report.
Q. Okay. In paragraph 13 he says that most trading and bonds, unlike stocks, takes place in the over-the-counter market and that's something you had

testified to; right?
A. Right.
Q. And then he quotes the SIFMA website for the statement, quote, the OTC market is much larger than the exchange markets and the vast majority of bond transactions, even those involving exchange listed issues, take place in this market?
A. Correct. I think this is -- he's reflecting very similar to the last time we had a deposition and I produced a very large book that was written. I gave -- you took as evidence --
Q. Yes.
A. -- that stated all of this.
Q. Right.
A. That was in complete contrast to Dubinsky's report.
Q. Right. And if Dubinsky had spoken to anyone who did trading and convertible bonds in the 1980s, would they have found this information out?
A. Yes.
Q. In paragraph 14 Feingold says in an OTC market investors do not trade directly with each other but with many individual dealers who continuously make markets, paren, buy and sell. As such, OTC markets are much less centralized and data

are less readily available. Is that accurate?
      A. That's correct.
      Q. If you'd just take a look at paragraph 15 and if you'd just take a moment to read that and then I'd like your comments on it.
      A. Right. He's basically saying that, you know, that -- that convertible bonds and bonds in general do not trade for the most part on the floor of an exchange. They trade over the counter between dealers. Madoff is one of the largest convertible bond dealers in the country. We made more markets in convertible bonds than any other firm. He doesn't state that, but that was common knowledge.
         And he's saying that you couldn't get accurate information, you know, until 2002 because that was when TRACE came in. And even when TRACE came in, there was question as to whether or not the correct volume was reported even then. Bond dealers in general do not like to report their transactions or their volume because they consider it proprietary information.
         The SEC would like -- look, the SEC would like everything to be transparent. That's been a -- in the 50 years I've been in this industry, that has been a debate that went on and still has not been

resolved. And to a certain extent, you know, they blame me for a lot of -- a lot of this because of the fact that we were the ones that pioneered the form of electronic trading.

Right now all of these problems that you have with this what they call that book that came out, Flash Boys, all the trading is done in dark pools and not -- when I came into this industry, 98 percent of the business in securities was traded on the floor of an exchange and listed securities.

The SEC was unhappy with that and I was given the responsibility for developing a more competitive marketplace. And that's how we started this electronic trading and that's how I developed NASDAQ originally. The volume on the -- on New York Stock Exchange's list of securities today is only about 30 percent on the floor of the exchange and 70 percent if it is done over the counter.

So and that's a constant problem. The whole marketplace has changed and will probably never go back to the way it was. And nobody wants to -- the goal of the industry is to have less transparency because people always -- always want to trade against somebody else. They're all competing with each other.

So the idea is to conceal what you're doing, what you're buying, what you're selling. And because of what the SEC would like to do, they'll never change that. Business is done more in Europe now than ever before and it's -- that's where the industry is.

Q. In paragraph 19 Mr. Feingold says, thus, when Mr. Dubinsky cites data from the New York Stock Exchange to support his arguments about bond volume, he is treating approximately one percent of the activity as indicative of the entire market.

A. Really?

Q. Is that --

A. Yes.

Q. In fact, I think that the book that you brought to the last deposition --

A. Right, right.

Q. -- said that one percent of the convertible bond trading was done on the New York Stock Exchange?

A. Right.

Q. And if Mr. Dubinsky or someone working for him had spoken to anyone who did convertible bond trading in the 1980s, would they have learned that?

A. Look, without trying to be cruel, the

Dubinsky report is an embarrassment. I mean, I just -- that's the only way to describe it. Quite frankly, I don't understand it because if you look at his background, you know, as an accountant and his so-called fraud order, I don't understand how -- to me it's a mystery and would be for anybody a mystery that would read that report would be stunned, you know, at his -- at the report.

I don't understand it. I mean, Feingold's background is certainly equal, if not better, than Dubinsky's and it's certainly more current. So but, quite frankly, you could find anybody that was familiar with the marketplaces that would be able to write the same kind of report that Feingold wrote that was critical of Dubinsky's report.

He does state in the report if you read through the Dubinsky report, he does make comments that he doesn't have -- he doesn't have access to certain information. He can't find it, but that didn't prevent him from still coming -- drawing conclusions.

So if you're going to -- if you're going to say, well, I only looked at the New York Stock Exchange volume, you know, and, therefore, I'm determined that Madoff could not have bought

securities because he -- you know, it didn't match the volume of the New York Stock Exchange when everybody knows that you don't -- you can't just look at the New York Stock Exchange volume.

I mean, how could you write a report that said that? What he should have said is I do not have access to the information to make a determination of whether these transactions took place or not. That's what -- that's what -- you know, that's what I would have done or anybody would have done.

Q. In paragraph 27 Mr. Feingold writes in paragraph 99 Mr. Dubinsky inaccurately describes the process by which convertible securities become common shares. He writes that, quote, many convertible securities have the option for the company to call the security at a predetermined date or at the company's discretion, that is, the company has the right to convert the convertible securities into common shares.

In instances where the bond or preferred equity is called, the shares are converted on the record date at a determined amount, end quote. In fact, except for a specific subcategory known as quote, mandatory, end quote, convertible securities,

the securities are convertible at the investor's discretion, not the issuing company's. When a company calls a security, the investor is then given a period typically between 20 and 120 days in which to decide whether to convert the security into common shares or to accept the cash call price stipulated in the company's call notice. Do you agree with Mr. Feingold on that?

A. Yes.

Q. Now, in paragraph 30 Mr. Feingold writes footnote one of two of Mr. Dubinsky's report contends that a significant percentage of the short positions reported by Madoff customers exceed the amount of short interest in those stocks as reported at month end by the stock exchange. I found this very dubious.

Going through the list I noticed that Pfizer, one of the world's largest drug companies, had short interests according to Mr. Dubinsky's table of 826,162 shares at the end of March 1992. Pfizer's closing price that month was $69.50 per share according to Yahoo Finance.

Average daily trading volume in Pfizer was 10.74 million shares. If Mr. Dubinsky's data are correct, the short interest in Pfizer then

constituted less than eight percent of an average day's volume.

A. I don't know what you -- I don't know what you're asking me. I mean, as I say, I'm at a loss to explain this whole Dubinsky report. I know, it's -- if it wasn't such a -- if his accusations weren't so serious, it would almost be comical.

Q. Well, is it difficult to find out what the average daily volume in Pfizer was?

A. Yes, I mean, because volumes were reported. The over the -- he's looking at volume that was reported on the exchange when over-the-counter dealers don't report the volume. I mean, you know, so you can't -- it's like adding apples and oranges. You can't -- you can't -- you can't find the information.

Again, as I said before, the business of an exchange is to try and let people know exactly what has happened. That's what they advertise. You know, an exchange wants to make everything public because in theory, you know, the SEC would love, you know, the public to understand everything that goes on, how many shares trade, where they trade, at what price they trade. Institutions who do the majority of the business want to do just the opposite.

They do not want to let, you know, everybody know what they're doing because it's no different than like insider trading. You know, the idea is you're in an industry where everybody is competing against each other, including -- including the public customers. You have to understand that the person who buys stock thinks he knows something that the person who's selling it doesn't understand.

It's not a zero sum gain. Someone is going to be a winner, someone is going to be a loser. And it's the same. So information is the key. People are trying to get less information out as possible, you know, but that's the way the industry is done now. The markets are not -- they're much less transparent today than they were 20 years ago, you know.

So you can't -- it's not an accident that people can't -- that Dubinsky can't find this information that he's trying to do because it's not available. I mean, quite frankly, I think that what happened was in fairness -- fairness to me, not the Trustee -- the Trustee drew conclusions from day one of what he thought he wanted to -- he wanted the outcome to be. He wanted the outcome to be that I was a fraud from the very beginning, that I never

did any transactions. He made statements like because he couldn't find confirmations, therefore, from other broker-dealers. Therefore, the transaction never took place.

All right. Him not understanding that the industry stopped producing confirmations to noncustomers. So when I bought stock from -- you know, in the open market from Merrill Lynch, we didn't send confirmations to each other. The industry discontinued that.

Picard drew a conclusion because he couldn't produce a confirmation. Therefore, the trade never took place. He totally ignored the fact that, number one, confirmations weren't even generated any longer, which is something that is very obvious to anybody in the industry. Also, he totally eliminated the fact that nobody keeps records past six years any longer.

They're destroyed, you know. So he -- you know, but he had a conclusion that he drew from day one very similar to what the U.S. Attorney did when he asked me do I ever short stocks and I said yes, of course, I short stocks. You know, he said did you ever sell to a customer that didn't know? Of course, I did.

You know, and I had to explain to the U.S. Attorney that that's what the business of market makers are doing, you know; but so he wanted to determine, well, since I always shorted stock back in 1962, that I might have never bought stock. I mean, you know, I don't -- I think that what happened was Dubinsky was -- you know, the Trustee must have told Dubinsky this is what my conclusion was. This is what my theory is.

And Dubinsky, whether he did it in a devious way or not, I don't think so. I just think that he just did the best he could. He wanted to get information, so he took whatever information was available. The fact that the information didn't exist didn't mean that, you know -- that, you know, the conclusion they drew, it didn't make any sense. I don't know what else to say.

Q. Okay. Now, Mr. Dubinsky opined that you were insolvent as far back as 1983.

A. I saw that.

Q. Do you agree with him?

A. No. I can tell you he stated how he came to that conclusion, you know. He just took whatever the -- you know, whatever -- he made the conclusion that I never did any transactions in '83. So,

therefore, he said since the customer showed that, you know, balances in the account from transactions, he figured, okay, that was a liability that Madoff had. He totally eliminated the fact that I was doing business, you know, back in 1983 and so on. So, therefore, I had the assets to cover that.

So he said, well, he knew what the liabilities were because it was a customer statement. He had no way of knowing what the assets that I had were because he didn't have any records going back then. I mean, who would possibly make a statement like that? I mean, the biggest mistake I made was not going to trial.

Had I gone to trial rather than just saying okay, I'm going to eliminate the government spending millions of dollars and years in a trial with me, I'm just going to admit that I was guilty because I was from 1992 on, which was bad enough. You know, they for some reason, the Trustee wanted to determine that I was guilty from 1963.

All right. Had I gone to trial, I would have called in any number of expert witnesses like this Feingold or anything else and the judge would have totally laughed the Trustee out of court. Why he even bothered writing -- 90 percent of his report

deals with after 1992. I already admitted that I didn't do the transactions after '92. So why spend all that time on that, you know? What he did prior to that made absolutely no sense anyhow.

Q. Now, did Dubinsky acknowledge that you held securities at Lehman, Bear Stearns, Morgan Stanley --

A. No.

Q. -- Fidelity and JPMC?

A. No, no. That's not true. He did state that I had an account at Morgan Stanley, yeah. He stated that. He didn't give any details on it but, I mean, it was he had a copy of the Morgan Stanley report in his information here. So, therefore, he had to know that I had securities over there. He did state that I had securities at those -- at other firms, yeah. He did state that.

Q. But did he acknowledge that you had purchased those securities --

A. No.

Q. -- with 703 account money?

A. No.

Q. Now, Mr. Dubinsky also opined that your firm was insolvent from 2002 on. Do you agree that you were insolvent as of 2002?

A. In 2002 I did not have -- if he's -- I would say yes, I was insolvent because I did not have enough assets to cover the liabilities that I had with the customers in 2002.

Q. If you had -- if everyone had demanded payment at one time?

A. Yes. You have to assume that if I show the customers had a liability on that, whether they asked me for it or not, I was insolvent. You have to make the assumption that if you owe the money out, whether you have the ability -- if you don't have the ability to pay if called, you're insolvent.

Q. Okay. Now, as of 2002 if the four families had paid you the money they owed you, would you still have been insolvent?

A. In 2002? Yes, because the fund business was -- I wouldn't have been able to cover all my direct accounts, you know, other than the funds because the customers only had a liability of $5 billion whereas the funds had $14 billion.

So, you know, I wouldn't have enough money to cover, you know, $19 billion; but I certainly wouldn't have had enough money to cover all my individual clients but, quite frankly, it doesn't make a difference. They're both the same.

Q. Looking at paragraph 39 of Mr. Feingold's report, he says an active trader would likely have held many convertible arbitrage positions for substantially less than the period until the next, paren, usually, end paren, semi-annual coupon was paid. Most likely, bonds were either converted or sold into the open market.

Again, an investor who sells a corporate bond receives accrued interest from the buyer instead of collecting on the coupon date from the issuer and the interest is built into the total cash inflow.

A. Right.

Q. Do you agree with that?

A. Yes.

Q. Is that the -- is that the strategy that you used?

A. Yeah. It's what anybody would use at TRACE. It's not unique to Madoff. It's, you know -- it's, you know, standard operating procedure.

MS. CHAITMAN: Okay. All right. We have to take a break because they have to change the disc.

THE VIDEOGRAPHER: Going off the record.

The time is 12:46 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: Back on the record. This begins disc number three. The time is 1:00 o'clock p.m.

Q. (By Ms. Chaitman) Mr. Madoff, I just have one other area that I want to cover with you and that is Mr. Dubinsky's conclusion that the proprietary trading aspect of your business never made money.

A. Yeah. I'm sort of at a loss for that because when I read that in his report, his own information was, and I don't -- do you have his report?

Q. I do.

A. And as I say, I'm overly sensitive to anybody criticizing the side of the firm that my sons ran, which was the proprietary and market making side. So where is the section --

MS. CHAITMAN: I think it's at the very end.

MR. SHEEHAN: I think there is an index.

THE WITNESS: Don't try to be -- don't try to be accurate. I'm not used to that.

MR. SHEEHAN: All right.

THE WITNESS: Oh, here it is.

MR. GOLDMAN: Bernie, tell us what page you're on. I'm sorry.

MS. CHAITMAN: Just tell us, yeah.

THE WITNESS: Page 116. He correctly states that the firm from 2000 to 2008 showed revenue of a billion three hundred thousand dollars in proprietary trading, but of that -- during that period it was 714, $715 million worth of income that came in from the 703, from the customer account.

So if you eliminate that, the proprietary trading only had legitimate profits of $573 million, you know, after you eliminated the money that came from the customer accounts into the proprietary trading. So it still showed the firm made 572 million, $573 million of profit.

Stating that, how does he determine that proprietary trading was not profitable? I don't understand it. It's like saying one and one equals three.

Q. (By Ms. Chaitman) Do you agree that 716 -- $714 million was transferred from the 703 account to the proprietary trading?

A. I agree with that. That really, you know, if you want to eliminate all the customer money that

was -- that was funneled into the firm, you know, was from customers, was not from proprietary trading, I would say that would be correct; but that in itself is not really correct because what he has no way of knowing is he -- is that the big four accounts that owed me all this money, for example, with one account that had a six point some odd billion dollar out, you know, debit balance, when those accounts put me in a short -- what's called a naked short position, which is what created my problem why I had to start the fraud in '92, all right, those short positions were mark to market, got mark to market at the clearing house every day, which typically happened.

So I was called for money to cover those, that deficit all the time. That was money that I was taking, so I did that by -- you know, part of it by transferring the money from the customer 703 account to be able to meet those margin calls, which was -- which I would have done normally had I been showing all the figures correctly.

So, you know, realistically, what I did was I penalized my proprietary traders' income, you know, but my proprietary traders as far as they're concerned, they made a million -- a billion two.

And when I paid -- when I paid my -- the percentage of their -- when I paid their bonuses based upon their profits, I paid it on a billion three because proprietary traders, I had no reason to penalize my proprietary traders because of the problem that I put myself in with those big four clients. You understand what I'm saying?

Q. I just want to clarify something. Staying on that page, the 714 --

A. Million dollars.

Q. -- million that Dubinsky found went from the 703 account, now, the proprietary trading didn't have their own bank account; right?

A. No.

Q. It went into the BNY account?

A. Right.

Q. Okay. So you agree that 714 million from the 703 account went into the BNY account?

A. Right.

Q. And as I understand your testimony, what you're saying is that some portion of that money was used by you to meet the margin calls --

A. Right.

Q. -- on the portfolio that you assumed from the four families?

A. Correct.
Q. That was subject to the hold harmless?
A. Right. Which normally I would have done had I shown that that was going on, but I didn't. So Dubinsky is not -- Dubinsky is correct. That money did come from the 703 account, but what he doesn't have anything to do with, which he doesn't know about, was the whole problem that I had occurred -- you know, that created that problem.
Q. But if the money went from the 703 account to the BNY account, then wasn't it commingled with all the money in the BNY account?
A. Yeah.
Q. So what is the basis of saying that any of it went to proprietary trading?
A. Because the problem, the margin calls that I got was because of customer account. In other words --
Q. But was that charged to the proprietary trading business?
A. No. It was. It wasn't on the focus report because it shouldn't have been. In other words, had I shown all of this stuff properly, that's what the SEC would have said yeah, of course, you can take them. That money in the 703 account is actually

part of that money is due me, was due Madoff. Not all of it, but part of it was. In other words, the monies that the four clients owed me, you know, from the hold harmless agreements, that money, part of that, the 703 account was their monies.

So I was not wrong. Under normal circumstances I would have taken that money. The reason why I paid my traders, my proprietary traders on the billion three, because that's what they made. The proprietary traders made a billion three. They didn't only make 573 million. They made a billion three.

And if my -- if I didn't pay my traders properly, they would have said -- they get 25 percent of their trade. They would have said to me, listen, because you made this ridiculous agreement with your four big clients and they cost you all that money, don't penalize us. That's your problem, which would have been true.

MS. CHAITMAN: Okay. I have no further questions. Thank you, Mr. Madoff.

MR. SHEEHAN: You're done?

MS. CHAITMAN: Yeah. I'm done. You want to change seats or --

MR. SHEEHAN: No. I'm fine. I do need to

get an outline out, but it will take just a second.

EXAMINATION

BY MR. SHEEHAN:

Q. Mr. Madoff, before we get started, I just want to ask you a question that wasn't quite asked the way I wanted it to be. That is, are you on any medications that would impair your ability to testify here today?

A. No, no.

Q. Okay. That's not particularized towards you. It's asked at every deposition.

A. Yeah. No. I understand.

Q. Because people do take medications that sometimes doesn't render --

A. No. I'm on lots of medication, but nothing that would impair my --

Q. Okay. All right. Just so you and I agree on that. Okay. Let me sort of go back over some of the testimony --

A. Right.

Q. -- this afternoon before we get into some other stuff I want to talk about. On November 30, 2008 your customer statements showed you to be owed your customers $64.6 billion, thereabouts; right?

A. Right.

Q. And when the Trustee looked at all of your bank accounts and stock they had available at that point, you had a little over 300 million left?
A. Right.
Q. So in the course of -- you're kind of short, yeah, like 64.3 billion dollars; right?
A. Right.
Q. Are you saying that that disappeared over -- that you actually could have covered everybody prior to 2002?
A. No, no.
Q. Okay. So what you did do, though, is that in 2008 according to our calculations you actually paid redemptions of close to $12 billion?
A. Uh-huh.
Q. About 11.7, I think, is what it was?
A. Right.
Q. Does that sound accurate to you?
A. I guess so, yeah.
Q. So there was a lot of money going out during 2008; right?
A. Right.
Q. But it wasn't anywhere near $64 billion --
A. No.
Q. -- that you said you were long?

A. No.
Q. And is it your testimony that that $64 billion shortfall occurred from 1992 through 2008?
A. Yeah.
Q. All right. Do you know what at the end of 1992 you showed on your books and records assuming all trading is as you say it was, what was on your books and records then as what you were -- you yourself were long?
A. Well, first of all, you have to understand that the -- there was -- the losses that I incurred from the short positions of the big four accounts, all right, that occurred from the 1987 through 1992 when the market had recovered from the crash in 1987. That was -- that was substantial. That could have been, you know, as I said, I don't know how many billions of dollars it was at the time; but you have to take that into consideration, you know.
Q. Right.
A. So, you know, the $64 billion, don't forget, is -- the reason that number got so large was that I was generating falsely like 12 percent return on all the -- on the principal money that was invested. Let's say the total of almost $19 billion, you know, at 12 percent return from

nineteen ninety -- from 1992 through 2008. That's where the $64 billion came in.
Q. Okay.
A. It was the profits that were being generated, the false profits that were being generated.
Q. I understand that, but let's go back to the beginning.
A. Uh-huh.
Q. I think sometimes chronologically it helps when we talk about this stuff.
A. Right.
Q. So you started the business in 1960; right?
A. '60, right.
Q. That's when you first registered. And did you start out as a market maker --
A. Yes.
Q. -- or as a retail business?
A. Well, I started, I did a retail business for the first three years until 1963. Then I became a market maker. After the market I had the 1962 new issue break, which was during the Cuban Missile Crisis and so on. When I had my first bad experience where I lost about $30,000 for some family accounts --

Q. Right.
A. -- then I had to borrow $30,000 worth of bonds from my father-in-law to be able to make my clients whole because I felt responsible for the losses that they incurred. That's why in like 1963 I decided I didn't really want to be in the retail business. I wanted to be a market maker. So I start making markets from 1963 on.
Q. When did -- did there come a time when you went back into retail business?
A. No.
Q. When did you start what we call the investment advisory business?
A. Probably '70s.
Q. And you would not characterize that as a customer oriented business?
A. Not really. I knew, yes, it would be.
Q. Right.
A. It would be, but it was never -- I never had a business where a customer would call me up and say I want to buy stock or what should I buy. In other words, when I started my business it was always sort of like a discretionary-type business where people would give me -- you know, basically it was family and friends who would give me a certain

amount of money. And I would invest, started doing convertible bond arbitrage. I never did retail business, like if you called me up and said I want to buy IBM.

Q. Right.

A. It was always a hedge type of trading that I started doing.

Q. So in the early '70s you started into the IA business? Let's just call it that.

A. From starting with the big four accounts plus some family and friends.

Q. Okay. So the big four accounts started with you in the early '70s?

A. Yes.

Q. Now, the strategy --

A. Some of them.

Q. Okay. We'll get into that later if it's important.

A. Right.

Q. But what were the strategies you initially engaged in? You mentioned convertible arbitrage. Were you doing that right away?

A. Yes. That was right.

Q. Okay. Were you doing other investment strategies at the same time?

A. No.
Q. Okay. I'm going to ask you some definitions just for --
A. Uh-huh.
Q. -- you know, the record. What's a discount arb?
A. A discount arb is when -- well, a discount convertible it would be.
Q. Yeah. A discount convertible.
A. Yeah. A discount convertible is a convertible is selling at a discount to what it's worth, the stock. In other words, if a bond is convertible into stock let's say at $10 a share and you're able to buy there would be a hundred -- the bond would be trading at a hundred and the stock would be trading at let's say ten. All right. That's what they call on the money.
Q. Right.
A. If the convertible bond, if you could buy the convertible bond below par, below 100, let's say you bought it at 98 and sold the stock at 10, you're doing a discount arbitrage because you can make -- you're making two points on it. So you would buy the bond, short the stock at 10 and you lock in a bona fide profit of two points.

Q. In terms of convertible securities, there are different kinds of those; are there not?
A. Well, for the most part they're all the same.
Q. Well, they may have the same features, but some are --
A. Some are trade in premiums.
Q. Yeah, but what I meant by that is this. Some are bonds. Some are warrants. Some are rights. Some are preferred securities?
A. Yeah. Well, they're not bonds, though. Arbitrage securities could be convertible bonds, convertible preferreds, units, warrants, rights.
Q. All right.
A. That's all hedge type of trading.
Q. Right. And did you in your convertible arbitrage strategy use all of those types?
A. All of those, yes.
Q. You used all of those?
A. Right.
Q. And do you know whether bonds were a minority or a majority of the trades you engaged in?
A. They were -- well, depending upon when it was, particularly bonds would be the majority of it.
Q. Okay. What does that mean, when it was?

A. I mean, when I -- when I was doing it, there was always more volume in convertible bonds than there would be let's say in warrants, units or rights; but depending upon when it was, depending on, you know, for example, when AT&T split up and -- and, you know, and became all the baby Bells that they traded, we made a market.

We were the primary market maker. As a matter of fact, I have a copy in my records here of an ad that we ran in the Wall Street Journal that said that we made markets, you know, to banks, brokers and institutions in all of the convertible securities. We did a very big business --

Q. Right.

A. -- trading all the various AT&T break-up issues.

Q. In the normal course in the '70s, let's give it a time frame, are discount arbitrage opportunities plentiful?

A. Yes. There were convertible bonds traded -- first of all, you have to understand that most convertible arbitrage trading did not go through the conversion process, which he even -- Dubinsky even states that in his report. In other words --

Q. You mean you didn't go through the -- I'm

sorry to interrupt you, but just to clarify, you didn't go through the conversion process or the industry?

A. The industry. In other words, typically most convertible bonds should always trade at a premium. In other words, when a bond trades at a discount, it's sort of a freak.

Q. That was my question. Thank you.

A. Yeah, yes.

Q. Okay.

A. So that, you know, obviously, if you can buy a convertible bond at a discount, you would typically buy it and convert it because you have a guaranteed profit and you lock it up. All right. But most convertible bonds create premiums because nobody in their right mind should -- you know, should ever, you know, buy a -- should buy common stock if you could buy a convertible bond at a discount.

Q. Right.

A. All right. So typically, in other words, look, to give you an example, when I hired David Kugel when he -- David Kugel used to work for a firm of mine, for a friend of mine whose name was Mike Lieberbaum, all right, who had a firm called

Lieberbaum & Company. When I first went into business we were friends. We went to high school together, college together, and his father had a business, Lieberbaum & Company. And David Kugel happened to work for him as a convertible bond trader, you know.

So what happened was, but that firm went out of business. They decided to liquidate the firm and they all retired, you know. David Kugel was working for that firm and looking for a job. Now, I was trading convertible securities at that time, so Lieberbaum said to me can you do me a favor and hire David Kugel?

Q. Right.

A. And I said I don't really want to hire David Kugel. I'm not looking for another trader. And, quite frankly, David Kugel was sort of a pain in the ass. You know, nice guy, but he was very difficult to deal with because you couldn't have a conversation with him that made any sort of sense; but -- and we used to kid about that, you know.

This friend said look -- he was my good friend, went to school. He said look, I'm trying to find this guy a job. You know, I feel bad we're closing the firm. Why don't you hire him? So I

said I don't really want to hire him, Michael. So he said -- you know, so I said look, he had a Friden -- you probably are -- how old are you?

Q. Seventy-three.

A. All right. So you remember what Friden calculators were?

Q. Sure.

A. The old with the hand crank? This is before computers. Okay. Mike Lieberbaum's firm, he had a Friden calculator, which was expensive. And I was, you know, relatively young in the business. So I said I want -- if you're liquidating the firm, I'd like your Friden calculator because we used to use it to figure out all the convertibles, you know, you know.

So he said I'll tell you what. Take David Kugel and I'll give you the Friden calculator. So we always used to tease David Kugel and say the only reason that we hired you is for the Friden calculator. He used to be very sensitive to that, but that was really a true story.

Now, I came up with a concept of -- I said to David, I said this is your job. I said I want you to track every convertible security that exists, okay, and I want you to track and see what the

historical prices of the convertibles. Most convertibles, we trade at premiums. So we used to have a -- and we used to have to do all this by hand, you know, before computers with this Friden calculator. We would track every convertible bond and see when it was trading at a discount or when it was trading at a premium.

So historically if you knew that a particular convertible security traded let's say typically at a three point premium but now all of a sudden it went to a ten point premium, all right, you would know that that premium is too high. It should go back to historically to a three point premium.

So we would go ahead and we would set up the trade. We'd buy the convertible, short the stock, all right, and then wait, hold them open, which immediately had a loss. So you're setting up a trade where you had a loss, but historically the bond would close up and go back to a three point premium.

You would then unwind the transaction, all right, and you'd make a three point profit. It's called Chinese arbitrage. Don't ask me why it was called that. It was just ass backwards. So for

some reason that was what the industry -- so most convertible trading went on at premiums, you know, where you set it up. You had a loss, but you knew what your loss was.

It was no more than three points. And David Kugel used to have a huge spreadsheet literally like this long that had tracked all the convertibles. And we would just -- and that's what we would do. So we would do business with our customers, you know, doing this kind of trading.

I was doing it for the big four clients and, quite frankly, it was like bending down and picking up money. All right. Now, most people on Wall Street didn't want to trade convertibles like that because your profit was limited, you know. You know, your loss was limited, but your profit was limited.

Q. How scalable was that kind of trading?

A. It was -- well, it was -- everything was relative. You know, when I first started in the business my -- you know, what I considered to be a great profit was different than let's say Goldman Sachs did. All right. So in that -- when I went into business all the convertible securities were handled by a handful of European arbitrageurs.

The whole business was handled by Goldman Sachs, Rouss & Company. There were maybe ten foreign convertible firms. The joke in the industry was that when you called up and asked a convertible bond market maker what the price was, he would say what do you want to do? You know, that was what -- they all had this heavy Jewish accent, but these guys were all money arbitrageurs in Europe.

Q. Right.

A. You know, and when they came to this industry, they started trading the convertible securities. All right. So after I got my brains beat in, which to me, $30,000 loss in 1963 was a lot, I said listen, I can't possibly -- you know, can't stay in this business like this because my father-in-law is not going to keep on lending me money to bail myself out.

So I said I can't do retail business. As a matter of fact, the SEC said to me, Bernie, when they examined my firm, the first examination and they saw that I paid back the customers $30,000 because they lost money, they said, you know, you really can't keep doing this because how many times are you going to do this? He said if you're going to be responsible for your clients, you know, that's

not a business you want. So I said you know what? I looked around for what I could do that had limited risk. And convertible securities to me, I decided that that was a business I wanted to be in.

So but the problem was it was controlled, that business, by Goldman Sachs, by all these handful of firms, by Bear Stearns and so on. So at that time I went and I had -- I went to see Gus Levy, who was the chairman of Goldman Sachs, you know, and I went to Bear Stearns, Cy Lewis, who was the chairman of that, and I said to them, you know, I did things that probably people today would think were stupid.

I had them -- I went up there and I said -- made an appointment with them and I said listen, I would like to trade convertible securities. And they said Bernie, you know, this is not a business for you. This is our business. You can't go into this business. And I told them the story and they -- I know it's hard for you to appreciate this now, but I was appealing to them in those days.

And I said look, give me a break. Let me make something. I told them my tale of woe and they said okay. Look, you know what? If you want to trade, if you want to trade convertible bonds, he

says I'll tell you what we'll do. We'll give you the odd lot pieces. We don't want to trade -- we don't want to buy ten convertible bonds and eight convertible bonds. We only want to buy 100 bonds and so on. So if you want the small ones, if you're willing to do the small pieces, you trade them. We'll send the customers to you.

And I said that's fine with me because whatever I made was good business for me. So I started doing that and I developed this relationship with these European arbitrageurs and they started sending me the odd lot business. And then, of course, kept on doing -- you know, I grew the business and that's how I got started in the business.

Q. I'll give you a break in a minute here. When you give an answer like that, and I'm not going to interrupt you because -- but it takes the court reporter a while to recover from that.

A. Oh, I didn't realize you were still doing it.

Q. She's constantly --

A. I didn't realize. I didn't realize this was on the record.

Q. Yeah. This is on the record.

A. I thought it was just curiosity. I'm sorry.

Q. No, no, no. Everything is on the record. Okay. Let's go back, though, just to the -- so we're back in 1970. You told us how this all got started, and the majority of your business at that point was premium arbitrage?

A. Both. Whenever I --

Q. Both. You were doing discounts, but you called discounts freaks just a moment ago; right?

A. Right.

Q. So when you spotted a discount opportunity by watching it as you did, did you not immediately, simultaneously, isn't that, you know, buy the stock or short the stock, I should say?

A. Well, you always sort of did what's called legging. In other words, when you -- you would buy even -- you would always buy the -- if you thought the bond was -- the mark was going to go up and you thought the bond was going to appreciate, the stock was going to appreciate because you know how to do it, you would buy the bond first and then you'd sell the stock later. You'd sell the stock on the way up. You know, depending upon which way you thought the market was going to go, that's how you determine

which piece to buy first.
Q. But --
A. You couldn't normally --
Q. I'm sorry.
A. You couldn't normally go in and buy the bond and short the stock and lock in the profit immediately. You had to take some degree of risk while you're setting it up.
Q. Isn't the classic definition of a discount arbitrage simultaneous buying and selling?
A. No.
Q. No?
A. I mean, no. That's not the way it realistically works. There's always -- I mean, if you could do it that way, that would be fine, but you're totally limiting your --
Q. Profit.
A. You're not only limiting your profit. You're limiting your ability to do it because you -- you have to be able to judge the market as well. It's not just a simple of just going in and having a guaranteed locked-in profit because the arbitrageurs would close that up immediately. In other words, you're competing against these guys. Obviously, if you can do a trade and have a guaranteed immediate

profit, that's the most -- that's the most ideal situation; but so you can do that, but even if you could do that, if you really want to be a good trader, you would buy it at a discount, you know.

You start -- you buy the bond when it's a discount, but if historically it would always go to a premium, you wait, what's called lifting a leg, in other words, so you have a risk involved and then you'll unwind the transaction.

MR. SHEEHAN: I want to get to that later. I agree with that.

MS. CHAITMAN: I'm sorry to hear that.

MR. SHEEHAN: No. I agree with what he just said.

Q. (By Mr. Sheehan) If you hang onto it, that can happen, but isn't -- well, I won't say isn't. What's a fractional share?

A. A fractional share is less than 100 shares.

Q. When does that occur in an arbitrage situation?

A. Not very often.

Q. When you convert the bond, preferred, whatever you're converting, does it not always have a fractional share?

A. Sometimes yes and sometimes no.

Q. Do you credit a fractional share or what do you do with it?
A. Yeah. I mean, if, in fact -- if, in fact, a customer -- depends upon if you're talking about doing it for a customer or doing it for the firm?
Q. I'm talking about a customer here. Okay. You're now selling this arbitrage strategy to a customer. You go in. You buy the arb. I'm calling it an arb.
A. Right.
Q. And then you short the stock and you do it simultaneously. And when you do that, you get a fractional share?
A. Yeah. Typically if customers do a fractional share, you would give them the fractional share.
Q. Do you give them the stock or cash?
A. You could do either, both.
Q. There are actually fractional shares that trade on the exchange?
A. You make a fractional share. Typically you would give them a cash credit for the fractional share.
Q. Typical, right?
A. Yeah.

Q. But more likely cash a fractional share?
A. Yeah.
Q. Okay. When does that fractional share occur?
A. I don't know when. I'm not sure.
Q. Let me rephrase it. Does the fractional share not only occur when you sell the convertible security?
MS. CHAITMAN: Objection to form.
THE WITNESS: Does the fractional share ever occur?
Q. (By Mr. Sheehan) No. I said does the fractional share only occur after you sell the convertible security?
A. I'm not sure. I don't know the answer to that.
Q. Well, if you don't sell the convertible security, there can't be a fractional share; can there?
A. If you don't sell the security?
Q. Yeah. So I'm not selling the convertible security. Can there be a fractional share?
A. Probably not.
Q. Okay. That was my point. Let me see. So let's go back to 1970. Again, you know, you were

doing -- let me ask you, where were you doing the -- and what I mean by this is market making or IA. Where were you initially doing the convertible arbitrage strategy.

A. Where?

Q. Yeah. Either market making -- where did it start, market making or IA?

MS. CHAITMAN: Objection to form.

THE WITNESS: Objection to form?

MR. SHEEHAN: Yeah. She can do that, too. She can do that.

THE WITNESS: Oh. It was one firm. You know, it was all done -- you know, at that time I was the only one doing it. It was I was the only trader when I first started, so it was me. It wasn't -- I didn't have -- David Kugel came in. You know, I don't remember when he came in, in '70 something or other, but the whole firm was me. I was doing it.

Q. (By Mr. Sheehan) I know it's one firm, but my point is you had the market making, which is you as a wholesale market maker; right?

A. Right.

Q. Over here you've got your IA business, which is your discretionary trading?

A. It was -- but it was all done by me as one firm. It was always one firm. It may have been -- you know, it was only later on when we had like different departments because the rules required you to have sort of different departments with different compliance procedures and so on and different supervisors, but when I started it was me.

Q. Okay. Just trying to figure out how this worked. Okay. So you used the market making inventory. I think this is your testimony. Tell me if I'm wrong. You used a market making inventory and used that inventory of stock in connection with the convertible arbitrage strategy in the IA business?

A. Correct.

Q. Okay. So the initial purchase would take place in the IA business -- I mean, the market making business?

A. Yeah, but if I was doing -- it was sort of one and the same. In other words, I was making a market around the customer security that I had.

Q. Right.

A. It depends upon sometimes if I -- sometimes I would just do the business for the market making for the profit and sometimes I would get a customer

order and I would do it for the customer.

Q. Right.

A. It depends upon -- you know, it was sort of all mixed in together, but it depends upon what was available.

Q. Well, when you're buying the stock in the market making business and, as you say, you're a market maker. You have to buy the stock. I understand how market making works.

A. Well, the firm had a limited amount of capital.

Q. Right.

A. So I could only -- you know, once I used up the capital of the firm, all right, obviously, let's say my capital could have been $20,000 in the firm's capital. So I could only -- I could only -- once I finished buying -- I used that $20,000 up, you know, if Carl -- let's say if one of my clients gave me $100,000 to trade with, obviously, I would use that hundred thousand dollars for the client to do business.

I might do also 20,000 for the firm's capital, but it was -- you know, I'm -- obviously, I was limited to what I can do for the firm.

Q. So Shapiro, just use him. I know we're not

supposed to name names --
A. That's all right.
Q. -- but that doesn't apply to me. It only applies to you.
MS. CHAITMAN: Thank you.
Q. (By Mr. Sheehan) So anyway -- because I'm not suing the Picowers, so there you go.
A. Doesn't matter.
Q. Can yell at me if she wants. All right. I don't know how we're supposed to comply with this. So Carl Shapiro comes to you, gives you a hundred grand, invest it at your discretion --
A. Right.
Q. -- right? How do you deal with that? So how would you take that hundred grand and put it into a convertible arbitrage strategy?
MS. CHAITMAN: Objection to form.
THE WITNESS: I would buy whatever was available, you know, for 50,000 or 100,000, whatever was available.
Q. (By Mr. Sheehan) Of what?
A. In whatever security that I was trading when that was available.
Q. Available in what sense? As a preferred or as a discounted arbitrage?

A. It could be any one of them. There was no -- it was up to me. It was usually -- sometimes it would be at a discount since it would be at a premium, sometimes doing a unit, a warrant or a right. It could be anything.

Q. Would you take that hundred grand and buy that security we just talked about from your market making account?

A. Well, it depends. You know, if it was -- if it was the market making -- if it was trading with the firm's capital, you know, it would be for the market making account.

Q. Right.

A. If I was working a customer order, you know, or with the customer's money, it would go into his account.

Q. Okay. Were you clearing those trades prior to DTCC yourself?

A. Clearing them myself, yeah.

Q. And how would you do that?

A. Those days the bonds would come in over the window. It was a physical delivery.

Q. Right.

A. You would pay for it. And then if it was convertible, typically we would use -- we would have

the bank convert the security. We would never convert the security ourselves physically because the convertible -- the clearing agent, the convertible agent may have been in Chicago. So we weren't going to get our trade until the Chicago.

Q. Right.

A. So we would use one of the banks. We would take the convertible security, send it over to the bank, give them instructions to convert.

Q. All right. At the beginning then you have a fairly active box?

A. Everything is relative. What do you consider active?

Q. Well, with no DTCC and you're self-clearing --

A. No.

Q. -- so you had physical possession of all your securities?

A. That's correct, right.

Q. Right. So and you used the banks just to -- you know, to exchange as you say when you were buying and selling?

A. Right.

Q. All right. You didn't use banks as depositories?

A. No. Well, if you were going to convert the security and use the bank to do that, you would send the security over to the bank and let them --
Q. Convert?
A. They would hold it. They would actually convert it. What the bank did depends upon what the bank's position was. The bank may have -- the banks may have been handling other customer accounts also, so they could actually borrow the securities, deliver you the securities.
There's all sorts of various, you know, mechanisms of how they would handle it; but in the pure sense the bank would then take the security and deliver it, you know, to whatever method they use to Chicago or whatever it is.
Q. Yeah.
A. You know, they would what they call draft a collection. And then they would do the conversion, get the stock and they would deliver you the stock and then you would deliver the stock out.
Q. To cover your short?
A. Well, it wouldn't be covering -- yeah. It would be your fail to deliver.
Q. Right.
A. Right.

Q. Okay. So how many customers did you -- in the IA, I'm calling it IA, in the IA business did you have to start?
A. Probably, you know, let's say 25.
Q. Okay. By 1980 how big was the IA and how many customers did you have then?
A. Well, I had, you know, the four big clients for sure. I had European clients in France. I was dealing business with the Rothchilds with, you know, a number of French big clients. And then I had my father-in-law had sent up this account, Avellino & Alpern, which was a limited partnership where they had their clients.
And they could have had typically probably 50 or 60 of their clients in his limited partnership that I traded for that limited partnership.
Q. Avellino & Alpern. Alpern is your father-in-law?
A. Yeah.
Q. Whose first name is Sam?
A. Saul.
Q. Saul, okay. And he had an account?
A. Yes.
Q. All right. Avellino, did he have an account?

A. Well, they had -- he didn't have an individual account himself. I don't recall that he did. They had it -- they just had this limited partnership account and he was part of it.

Q. What was the nature of the limited partnership, if you know?

A. They had -- they had this -- they had a bunch of their accounts. They were all sort of, you know, somewhat wealthy individuals that they did the accounting work for. So they -- they formed a limited partnership. It was sort of like an investment club where they -- let's say they had $100 million. It's a round number.

Q. Right.

A. That might have had, you know, fifty clients. They couldn't have more than 100 clients because the regulations were that in order for you to not be an investment company, you had to have less than 100 clients, which they clearly had -- you know, that was never a problem for them. So let's say they had 50 or 60 different clients in there. I would -- I opened up an account.

I had an Alpern and Avellino or Avellino and Alpern, whatever it was. That was the account. I would then treat that as one account, as a limited

partnership account. I would buy, you know, various convertible bonds for them. I would then, you know, send them the confirmation on the transaction. They would get the -- they would then split that up.

If they had 25 or 50 accounts, they would based upon the amount of money that each client had, that would be what percentage each client had of that -- of the limited partnership. And they would -- they would actually report the individual transactions. And each client would file his own on his tax return, which Avellino and Alpern would handle for them, being their accountant.

Q. Right.

A. They would show short-term capital gains, you know, on each -- on the transaction.

Q. So from the beginning were you aware that there were all these people behind Avellino and --

A. Oh, yeah, yeah, yeah. I knew them all.

Q. Okay.

A. That was before Mike Bienes got involved and my father-in-law retired. And then they went to that. That's how their problem started. They made -- he made a decision on his own without even telling me, you know, that they were issuing notes. They decided they would just pay them interest and

they would, you know, take all the actual transactions themselves.

Q. Let's talk about those notes. Would those notes guarantee interest to your knowledge?

A. The first time I found out about that was in 1992 when the SEC, you know, told me that they had all of these, that they had a number of -- as far as I knew, they had like I don't remember whether it was three accounts or four accounts. All different Avellino and Alpern accounts, but they had like maybe three limited partnership accounts, but I wasn't aware of the fact that they were actually issuing notes --

Q. Right.

A. -- you know, to them because I had already told them that you can only have 100 clients in a limited partnership. Otherwise, you would have to register as a -- as an investment company. They claim that they thought that they were okay because they were -- although they think they had like maybe 300 accounts as it turned out what the SEC said, but they were a lot of family accounts.

So they said they were counting each family as one account, even though there could be a son-in-law, a son and so on and so forth. The SEC

basically's position was that they said look, as a matter of fact, when they called me up to tell me, they said -- you know, they asked me, you know, I got a phone call from the SEC to say, you know, you have this account, you know, these accounts, these accountants, you know, and they have too much money. They have too much money, too many clients on there. It's an investment company.

And I said -- and I told them how I was handling it and they said yeah, okay, that's fine, but these guys are paying notes. You know, it's different. So I said, well -- you know, I was upset with them. I said what the hell? They never told me. So when I called them up I said listen, I'm closing these accounts. I'm sending back the money.

The SEC said to me at the time, you know, you don't have to do that. He said, you know, you can just tell them to register, but I said no. I don't want to do that. So, you know, I sent them back all their money, closed their accounts. As a matter of fact, the SEC when they -- as soon as this happened the SEC came up for the whole examination.

They sent up the group chief from New York. They looked at the accounts. They saw that all the money was there. They saw that I was actually

buying the securities because they were able to -- they looked at the -- at my stock record. They looked at DTC. They saw that I had the securities and so on. And, you know, I said I'm closing the accounts, and I did. And I returned all the money. And then I took in the accounts.

My father-in-law called me up and he said look, you know, these people are all crazy. They're sending -- they're hysterical. You know, they're relying upon the money to live on, these clients. And they said they didn't do anything wrong. This was all Mike Bienes's stupid -- so I said okay, fine. I'll open up individual accounts, you know, but I only want like $500,000. I don't want an account for 50,000 or 75,000.

So I said the account -- each account could be 500,000 was the minimum. I said if they want to take a five -- if they want to form a family partnership, that's fine, but it can only be their family. I don't want anybody -- I don't want to have more limited partnerships. So they said fine and that was what we did. And they opened up a whole bunch of accounts, you know, like a few hundred accounts.

Q. The three partnerships of Avellino and

Bienes before the SEC, were you guaranteeing a return to them?

A. No, no, no.

Q. Were you trying to predetermine the amount that you would give them?

A. No. They had -- I told them what the expected return was. In other words, look, when you did arbitrage, anybody did arbitrage, there was a -- you had a what you would consider to be what would be the reasonable rate of return for doing arbitrage. It's no different than if you do a covered option right, which was like the split strike conversion was.

Q. Right.

A. You know, you're not going to do it for -- you know, typically you would do it for double the long bond rate. So if long bonds and Treasury bonds were playing let's say five percent, you would expect to make like 10 percent return; but, you know, it depends.

In 1980, for example, interest rates were 12 percent. So, you know, unless you could do it for 25, 30 percent return, you wouldn't do the trade.

Q. Weren't you asking David Kugel to actually

look at convertible arb, arbitrage opportunities, to
guarantee an outcome?
A. Not -- there wasn't such a thing as a
guarantee of return. It's what you expected to
make, called an expect return.
Q. Didn't David Kugel actually look
historically backwards to take trades that had
already happened --
A. No, no.
Q. -- and manufacture those into guaranteed
results?
A. No.
Q. Why would he have testified to that?
A. I have no idea. I told you that.
Q. Why whatever the Trustee said or did
influence David Kugel's testimony?
A. I don't know what happened between the
Trustee and David Kugel. You know, as I said, it
was -- you know, I was -- my clients all knew, you
know, there was no secret as to what our strategy
was or what it was. It was a very common strategy.
It wasn't rocket scientists.
So people knew that if you're going to do
hedge type of trading, whether it be any one of the
different kinds of arbitrage or hedge trading, what

your return would be. You wouldn't do it if you didn't make at least double the bond rate. It wouldn't pay to do it. So clearly David Kugel knew. All my traders know we're not going to tie up the firm's capital for ourselves or for a client unless we can -- we have a good reason to believe at least our goal was to make double the long bond rate.

So depending upon whether the bond rate was -- let's say in 1980, for example, unless I thought I could make, you know, 25 or 30 percent return, you know, I wouldn't -- wouldn't do the trade. If the interest rates were five percent, then ten percent looked attractive to do it.

So if I -- David Kugel or any of my traders knew, you know, don't tie up the firm's capital, don't do a trade for making two or three percent, might as well put your money in bonds.

Q. Right.

A. So, you know, David Kugel knew even if he's trading for his own account, if David Kugel or any of the traders came to me and said, well, okay, I'm tieing up the firm's capital and I'm making five percent return, I'd say what are you? Crazy? I mean, you know, we didn't do that. As a matter of fact, we used to send our client, we had what they

call a portfolio evaluation report where we would -- a customer -- would send them when we were doing arbitrage what the expected return was, what their actual return or how much was their over and under. You must have seen that these reports, they were part of our records that were generated.

You saw that we said expected return, over and under return and so on and so forth. And depending upon the strategy and what you wanted to do, that's what you made. So all of our -- when people came to do arbitrage for us, it was always from day one that the return was going to be -- that the goal was to make double the long bond rate.

Q. How could you guarantee that?

A. We didn't guarantee it. It's what we expected. We didn't guarantee anybody.

Q. Did you ever not do it?

A. Of course. What do you mean did we ever not do it?

Q. Did you ever not do what you expected?

A. Sure, at times.

Q. So if we go through your records, you will have losing periods of time?

A. Look, let me -- I see where you're going. Let me -- let me tell you something. Let me give

you an example; okay?
Q. Yeah.
A. When --
MR. SHEEHAN: Are you okay?
MS. CHAITMAN: Yeah.
MR. SHEEHAN: All right.
THE WITNESS: When we were doing -- because nothing I'm telling you is not something that was widely known and was given to reporters, to people that wrote the books and so on. Nothing in Madoff is really a mystery. All right. When we did -- the only mystery was that we weren't actually doing the trades, but our strategy was always very clear.
So I'm going to tell you an example, give you an example of one. The chairman of UBS, Union Bank of Switzerland, one of the world's great Nazis if you ever met him --
MR. SHEEHAN: I did.
THE WITNESS: -- came up to my office. All right. And because when we were doing the split strike trades, all right, everyone said, well, listen, you know, Madoff is making double -- he's making -- you know, you know, he's making like a 12 percent return, which in those days, you know,

was a very good return. And the guy never has -- he very rarely has a losing quarter, okay, which was true. He very rarely had a losing quarter.

And he would say, well, how the hell do you always -- you know, how does that happen? I said wait a minute. You understand that -- you understand how the transaction works. And now literally the Chairman of Union Bank of Switzerland in my office and chairman of almost most of these banks along with the guys that ran their trading desk because when they were doing the due diligence, everyone wanted it figured out. Madoff can't be this smart, so what is the strategy, you know? Explain it to me.

So I'd say okay, fine. And I would, you know, show them what the strategy was, very vanilla covered right with a quick wrapper. So that was something that we sort of started, but everyone understood what it was. They said -- I said and, all right, so you understand that your loss is going to be limited because the put is going to kick in.

So your loss is limited basically to one or two percent on each trade and your profit is typically, let's say, three percent. So you have a two-to-one sort of ratio, all right, but you

definitely from the day we start the trade, you definitely can lose. If the market goes against us and we're guessing wrong, we're going to lose one or two percent. If we're right, we're going to make three percent.

You're never going to make really more than that because then you're going to be called away. Then that was the strategy. So let's say one percent loss, three percent, and everyone understood that. We said okay. Now, typically the strategy is like a three-month strategy because of the 90-day options and so on and so forth.

We said so if you look at, you know, over the course of a year, maybe we'll have three or four losing quarters and the rest of it, you know, we have gains, which everybody said, well, that's still pretty good, you know. And we said you understand the reason why you don't -- that the whole -- the key to the strategy is that you're never forced to liquidate the strategy even -- you're going to be wrong.

We're going to set it up and we think the market is going to go up. We may be wrong. You know, two days after we set the strategy up, the market may go against us and we may have a loss, but

we don't have to sell it out because we have the put. Until the put expires we can keep the trade open, waiting for the market to reverse and go up. If the market goes up, then we're fine and we're going to make a profit.

If the market doesn't go up and continues to go down, we're going to have a loss; but the big key is you're not forced to sell prematurely unless it happens within three months.

Q. Can I ask you a question?
A. Yeah.
Q. Didn't all your puts expire?
A. Huh?
Q. Didn't all your puts expire?
A. Eventually. Eventually they expired.
Q. Because you never lost?
A. No. What do you mean never? Wait a minute, wait a minute. Let me finish.
Q. Then you never lose?
A. Yes, of course, we lost.
Q. But you -- all your puts expired. Saul Katz said to me that he asked you one time why are we buying puts, because we never lose. Do you remember that?
A. Oh, a lot of my traders would say let's not

buy the puts because why are we going to pay the premium on the puts?
Q. Yeah.
A. And I would say because that the key to the strategy is to be able to limit your loss.
Q. Right.
A. You know, you're not forced to sell.
Q. So we're on the split strike now, and I want to go back to convertible arb, but just one thing. Isn't split strike strategy, which is common, it's not unknown, a conservative strategy?
A. Yes.
Q. Right. And you don't expect big returns from that; do you?
A. No.
Q. Because you capture --
A. Right.
Q. Yeah, okay.
A. So let me finish --
Q. Sure.
A. -- the story; okay?
Q. Didn't mean to cut you off.
A. When they said -- you know, I said did you ever look at the strategy, you know, on a day-to-day basis and see what happened? So the guy said, well,

no. I'm only looking at it, you know, over the course of a year or the course of months. And I noticed that over the course of a year we had three losing quarters, we had one losing quarter or we had one losing month.

MR. SHEEHAN: Bless you.

THE WITNESS: Really, we had very few losing quarters, but we did have losing months I said if we close the trade out. So I said let me show you -- let me show you a chart that shows you what the strategy did on a daily basis. And they would look and they would see that they had the strategy set up for 90 days, but it could be ten days where we actually had a loss had we closed it out.

So if I was forced to close it out because the option was going to expire, the put was going to expire or not, I said there are lots of -- I said if you look at the trade, you would see that this -- you would see it looks like this. Okay. Now, we would only close it out hopefully when we had it here, but if we closed it out when we were not here, we'd have a loss.

Q. Right.

A. So then he said ah. So there are loss --

there would be loss trades. If they called me up and said to me I want my money back, close out the strategy, which no one -- very rarely did anyone do that except in 2008 when people were getting margin calls all over the place; but before that nobody ever called up and said sell it out because I would then say to them, listen, if you force me to sell it out, I'll sell it out. I'm sending your money back. Don't come back. Okay.

Q. I want to go back to the -- but I want to --

A. And let me just tell you one other thing.

Q. Sure.

A. You've heard of Jim Simons; right?

Q. Of course.

A. Okay. Now, I handled Jim's private account, his foundation account.

Q. Yeah.

A. Now, when Jim Simons, who's probably one of the smartest traders on Wall Street today, all right, you know, called me up and he said to me, look, he said, Bernie, he said you know what? He said I'd like you to handle all of Renaissance business as a dealer. Your market -- I want your market makers to trade because we're sending our

business down on the floor of the exchange of the two Bear Stearns and, you know, they're clipping us left and right on commissions and so on. So Madoff has the fastest execution in the industry. I'm going to let you do our business.

So I said really, Jim, I don't want your business because your traders are too good. So I don't really want Renaissance business. So he said come on, come on. We'll give you the good business. I said don't tell me you'll give me the good business. You aren't giving me all your business and I don't want my traders competing against yours because we're going to lose money.

So he convinced me. He said look, just take it, you know, but also I also want you do my -- handle my foundation personal account. So he set up an account, I don't remember, that was two million, ten million. I don't remember it anymore. You know, it wasn't a big account, but let's say I think it was in the neighborhood of 10 or $20 million.

So he understood as every one of my clients understood the transaction. They saw it because they got the confirmations. They saw what was buying and selling. They had the ability to see whether or not the trades could be done or couldn't

be done, and they -- so they saw the trade and the trade made sense. If you'll remember going back when you came down to visit me, I said to you when you told me we're going to sue all these funds and this, I said do yourself a favor.

If you think -- if you're going to believe Harry Markopolos, who's one of the big idiots in our industry, the great whistleblower, and believe him that this strategy did not make any sense and if you're going to say the reason your funds should close out, you know, should have noticed a red flag, don't say the strategy didn't make sense because I'm telling you we had virtually every important trader on Wall Street and the chairman of every firm had a client -- had accounts with Madoff.

They knew the transaction made sense to do it. They knew what my advantage was of being a market maker and doing all this volume.

Q. But they also knew you weren't doing split strike; isn't that true?

A. No.

Q. Didn't they all know you weren't doing split strike?

A. No, no.

Q. They knew you were telling them that?

A. No. And if you believe that anybody thought that I would -- why would anybody give me money thinking that I was committing a fraud?

Q. Why did Jim Simon take his money out?

A. Because I'll tell you why Jim Simons -- because Jim --

Q. You know, he's testified so I have sworn testimony of why he did, so let's hear what you think.

A. Yeah. I know why. I'll tell you why he's closing money out. Because he had -- he got wind that the SEC was investigating me because they were investigating him. What happened was the SEC was investigating all of the hedge funds, had nothing to do with Madoff. All right.

And the -- and Jim Simons, you know, was getting -- had an inquiry about his firm. All right. And one of the things was Madoff, was doing business with Madoff. So Jim Simons knew that the SEC was questioning me and, therefore, he wanted to close out the transactions.

He had no idea that I wasn't doing the trades because -- and none of them did. I don't care what anybody says now. Well, I always knew. Believe me, none of these guys would have done --

they're not crazy. Why would they want to be giving money to a firm that was committing a fraud? They didn't know. Now, there were some firms that didn't care whether I shorted the stock to them.

As a matter of fact, as I -- as I told people, all right, I got a call from Switzerland once. This was -- I don't remember what year it was.

Q. I think we're drifting from Jim Simons, but you're going to connect that up or --

A. No, no.

Q. Okay.

A. This was from -- I get a call from Switzerland from one of the hedge fund managers in Switzerland and he says hey, Bernie, you know what? He said there's a rumor going around Switzerland that the reason that you are -- you're able to do these trades so successfully, which I never considered being so successful, was that you're front running -- you're front running all your -- your market making orders, which, by the way, that's what Markopolos told the SEC.

You know, because, obviously, you know, if, in fact, I was front running the orders, you know, that would be a great thing. It would have

been, unfortunately, illegal and very easy to check whether anybody is front running. And believe me, I know that because I know what the rules are in the industry. And when Markopolos went to the SEC and said you're front running, the SEC said Bernie wouldn't be front running.

So when they -- when they looked at it and they looked at all the information, they said no, no, this guy is not front running. And the reason I wasn't front running, because I wasn't doing the orders. So, of course, I wasn't front running because I wasn't actually doing the trades. So the SEC looked at that. They didn't know who was doing the trades, but they knew I wasn't front running. Now, let me finish. Switzerland thought I was front running.

Q. I've been very good here.

A. You know what they said, front running? They said if you're front running, that's great because front running isn't illegal in Switzerland. We don't care if you're front running. If the SEC closes you down for an SEC violation, so you'll give us our money back. We're happy. That's not our problem.

Q. I'm aware of that.

A. And I said I'm not front running. I wasn't front running because I wasn't doing the trades.
Q. Right. And the reason you were always successful is you were using yesterday's newspapers; correct? You weren't actually trading, so you made those trades based on yesterday's newspapers?
A. When I wasn't doing the trades, yes.
Q. Yes.
A. Yeah. That's no secret. I said that.
Q. So, therefore, no one, including Jamie Simon, could replicate that; could he?
A. He could have if he was a market maker, yeah.
Q. How could he do it without yesterday's newspaper?
A. Let me ask you, don't you think that they -- that they knew that I -- don't you think that they originally thought that I was doing the trades? Do you really believe that anybody gave me money and knew that I was committing a fraud?
Q. People do it every day, Bernie.
A. Not these guys.
Q. All right. People do it every day.
A. Not these guys. Don't believe that, David.
MS. CHAITMAN: Is that what Simons

testified to?
MR. SHEEHAN: Simons testified he couldn't replicate what you were doing and got out.
THE WITNESS: Yeah.
MR. SHEEHAN: That's what he said.
THE WITNESS: Yeah, but do you know why he couldn't? Because he wasn't a market making firm. He wasn't doing the volumes that we were doing. That's why he couldn't do it.
Q. (By Mr. Sheehan) I mean, yours was all fictitious?
A. Wait a minute. It was fictitious because -- all right. Let me --
Q. It never happened.
A. Since you want to know this.
Q. No, no. Let's go back. We've got all day tomorrow to talk about this.
A. Okay.
Q. I want to get back to the early '80s. All right?
A. But let me just finish. Let me explain something to you.
Q. All right. Go right ahead. I won't cut you off.
A. Okay.

Q. I won't cut you off.
A. The people always wanted to know how much volume I was doing. Okay. That was the big secret. How much money is Bernie Madoff doing? Okay. And typically they thought that I was doing $20 million, $20 billion.
Q. Billion, yeah.
A. That was the -- that was the consensus. I was doing 20 billion; okay?
Q. Yeah.
A. So it was about 20 billion because that -- because when I filed an ADV report, the most I showed was 16 billion.
Q. Right.
A. All right. But so they thought that it was 20 billion, but let's say it was when they finally got the ADV report in 2006, it showed 16 billion. So everybody said, well, 16 billion, that's a lot of money; but this is -- how does Bernie Madoff do the trades?
Okay. Number one, typically he never had more than 50 percent of the money invested. Fifty percent was in T bills, 50 percent was in the marketplace. Sometimes it was 100 percent, but it most of the time was not 100 percent, but let's

assume it takes 16 billion. Let's assume I invested 16 billion at the most, which is what they thought. Okay. The $16 billion was invested over a period of four days, you know. So, you know, it's 4 billion a day, all right, at most, was 4 billion or 2 billion depending upon how you want to look at it.
Q. Without an ounce of volatility?
A. Huh?
Q. No volatility?
A. Four billion dollars, for me to invest $4 billion when you're doing 10 percent of the volume of the business is nothing. So the people that -- believe me, everything that you're saying, when guys first came in, everybody figured, well, this guy must have -- must be doing something wrong because how could he possibly be making this profit? All right. So then I -- but I heard that all from day one when I was doing the trades, you know.
Q. In the '80s?
A. No. I wasn't doing this in the '80s.
Q. You said you were doing the trades?
A. You're doing convertible bonds.
Q. Right.
A. I wasn't doing split strike.
Q. Right.

A. I'm talking about when I was doing convertible bond trades, I wasn't doing it for funds. I was doing it for -- just for my clients, and that was no big deal for me to do that. I mean, you're not -- now, you can sit here and say that I never did the convertible bond trades because that -- I wasn't doing the convertible bonds trades to be a problem at all.

I mean, I was the largest convertible bond trader in Wall Street at that time. Nobody thinks that I was -- I wasn't managing that much money in convertible bond trades even with the four big clients because I wasn't doing convertible bonds for them in 1980.

Q. When did the big four start the margin accounts?

A. What happened was I was doing the big four accounts when I started doing business for them. I've been doing -- it started in the '70s. Someone like Levy came in in the '90s and so on, and so but let's assume I started doing it let's say in the '80s when I was doing it. All right. And everybody was doing convertible bond trades. And in those days they were making, you know, 25, 35 percent. It was no big deal to do that.

Q. All through the '80s, I just want to be clear, the big four did convertible bond? They didn't do different strategies besides that?

A. No. Because what happened was --

Q. Okay.

A. -- you know, you know, in 1980, before that up to 1980 I was doing convertible bonds with them. All right. The four big accounts were doing convertible bonds. And what happened was in 1980 they came to me. They were doing straddles. Everybody that was doing short-term trading in Wall Street was hedging their trades using commodity straddles.

Q. Right.

A. You remember, you know what commodity straddles, silver straddles?

Q. Yeah, of course.

A. Okay. So they were doing silver straddles through Bear Stearns and through E. F. Hutton and so on.

Q. The big four?

A. Big four. All right. They were hedging because the arbitrage was all short-term capital gains. So they were making short-term capital gains making, you know, nice returns; but they -- you

know, tax rates, you know, were 80-some odd percent, you know. So they -- they were using the silver straddles to hedge themselves. And that was fine until the IRS started challenging the silver straddles saying that there was no risk. These were sham transactions and so on.

Q. Right.

A. And they were doing them through -- we didn't do that business, but I was doing it for these clients. I had recommended them to Bear Stearns and Carl Shapiro had a son-in-law at E. F. Hutton, so they were doing the straddles.

So in 1980 they came to me and they said look, you know, Bernie, isn't there anything we can make long-term capital gains, you know, because the short-term, the arbitrage, the profits are great, but the tax rates are killing us. And now we can't use the straddles because the IRS is challenging the commodity straddles for us.

So what can you do to generate long-term gains? So I said wait a minute. Look, forget about the real estate shelters because that was being charged -- that was being -- that was being threatened. Picower was doing the leasing things. He had his leasing companies, cockamamie thing that

he was doing. You know, everybody had their -- you know, was doing something. All right. So they came to me. Can you do -- what can you do to generate long-term gains? I said the only thing you can do for long-term gains is actually to put on long-term positions, not do the arbitrage.

You can just -- you've got to buy portfolio of stocks, but in order for that to work, the market has to go up. And I can't tell you whether the market is going to go up, you know, from, you know, 1980.

Q. Right.

A. I said so you want to -- you know, that's the only thing that's available. I don't want to do any real estate tax shelters. I don't want you to do any silver straddles anymore. You know, this is the only game in town if you want to do that; but, you know, I don't know if the market is going to go up. I said I can put together a portfolio of stocks, a diversified portfolio. I happened to like the market, you know, in 1980, but there's no guarantee.

And, you know, so I don't know what to tell you. So they said, well, can't you hedge it? You're supposed to be the great hedger. Can't you

hedge it? I said yeah. You can hedge it. There are certain ways you can do it. You can go short against the box. You know, you can do, you know, pairs trading; but, again, you have to hold them for a one-year period. That was the holding period.

So I, you know, explained to them all this stuff and I said and there's no guarantee. You want to do it, but, you know, it's better than nothing if you want to do it. So they said fine. Let's do that, you know. So I said so all right. Now, coincidentally at the same time they were doing that, I was doing a hedging strategy for a group of European investors.

Q. I remember you telling this already.

A. Yeah. So they as it turned out, it would have been -- they would have been a great counterparty for these other traders because they were doing the hedging strategy. As I explained to you, they had to be in -- they had to be in U.S. securities in order to hedge the French franc and so on and so forth. So, you know, I said to them okay, look, this is the deal.

I can set up portfolios or strategies for you guys for the big four. I said I have counterparties that supply the liquidity to you on

the other side, put you guys together. The only problem is you have to all understand that you can't unwind these strategies prematurely because these guys, you know, you're going to screw them up. So if you're going to unwind, you both have to be agreed to unwind at the same time.

So Shapiro and the rest of these guys, you know, Picower, said okay, fine. It's a risk, but it's better than what we were doing anyhow. We have no other choice, so let's do it. So I put the portfolio on for the four big clients, which is not difficult to do.

Q. When did you do that?

A. 1980 I started doing that with them.

Q. Okay.

A. I put the portfolio on for them. You know, the portfolio and the French guys were doing it. Their side was great. It was fine. And the market, of course, started to march up from 1980 to 1987. Everything was going along fine. And, of course, my four big clients, being the greedy people that they were, never wanted to close out the transaction.

They wanted to keep rolling it, which is very typical because everybody -- nobody wanted to close out the money. They just -- let's roll it,

you know, just keep rolling it and because why should I pay the tax? Why do I have to pay the tax money? The rate was still, you know, even on those long-term gains were better than short-term gains.

They didn't even want to pay that, so but the market accommodated everybody. So from 1980 to 1987 everybody was making a lot of money doing this strategy and everything was fine. Comes the crash in 1987. The shit hit the fan or forget about repeating that, you know, and these -- my four big clients said holy cow. We've now, you know, had seven years of long-term gains.

You know, we're going to get killed. We're going to give all that up with the market going down. I said relax. Don't worry about it. The market eventually will turn, I said, and you guys made a commitment to us. We have this commitment to, you know, to the French people. And I'm not going to unwind. I can't unwind them, you know.

So these guys -- that's when they started to hold on. They said close out the -- sell the longs, don't worry about the shorts. The market is going to go -- continue to go down. We're not worried about it. We'll hold you harmless for any

losses.

MR. SHEEHAN: Okay. You want to take two minutes? I thought you would.

THE COURT REPORTER: Yes.

MR. SHEEHAN: All right. I know we have to leave soon, but I --

MS. CHAITMAN: Yeah. No. Whatever you want, yeah.

MR. SHEEHAN: I don't want this young lady to have her hands fall off because when you get on a roll, Bernie.

THE VIDEOGRAPHER: Going off the record. The time is 2:14 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: Back on the record. This beginning disc number four. The time is 2:25 p.m.

Q. (By Mr. Sheehan) Do you recall when you started using DTC?

A. No.

Q. Would it help if I called it NSCC instead?

A. What year? Certainly before DTC because, you know, I don't remember the year. It's in the report somewhere.

Q. Right. Early '80s? That work for you?

A. Yes, yeah.
Q. Early '80s. We'll work with that.
A. Yeah, because I was -- I was chairman of NSCC 1984 through 1987, so --
Q. Right. At that point you're still obviously -- were your stocks then on deposit at NSCC?
A. No. NSCC didn't hold. They weren't a depository.
Q. Okay. What function did they perform?
A. Just the clearing and settlement, the settlement, money settlement, the netting. So securities weren't delivered there.
Q. Uh-huh, okay. So were you still holding your securities physically at that point?
A. Yeah. We were holding them physically or down at the banks.
Q. Uh-huh, okay. Where were you located in the early '80s?
A. 110 Wall Street probably. We moved up in sometime in the mid-'80s, I think, to 110 Wall -- I mean, to 885 3rd.
Q. Okay. I wanted to clarify something else, too. You talked earlier about DTCC; right? You had a -- the account there was 646?

A. Yes.
Q. Did you have any other account?
A. No.
Q. Okay. You talked about all your stocks would be there except for bank loans. Do you remember that?
A. Right.
Q. All right. Would not the fact that there was a bank loan with regard to certain stocks also show in your account?
A. There would be a what?
Q. If you had a stock loan?
A. Right.
Q. All right. To the bank and the bank, therefore, had your stocks pledged --
A. At DTC.
Q. Yeah, DTC. It would also show in your account that you had so pledged those stocks; would it not?
A. Yes, probably.
Q. Okay. Could you pledge customer stocks?
A. Could we?
Q. Could you?
A. Yeah.
Q. You could use that for stock loan purposes?

A. Yes.
Q. Okay.
A. Either at -- it depends upon whether we did it at DTC or we did it at our banks, at one of the banks.
Q. Okay. So let's go back to the 1980s and the long strategy that you started --
A. Right.
Q. -- for the big four. The big four at the same time, were they still doing convertible arb --
A. No.
Q. -- at that point?
A. They were -- some of -- I think Stanley Chase was doing it for some of his accounts. He was doing -- he was still doing convertible bonds. Oh, in 1980 you're talking about?
Q. In the '80s when you started the long strategy.
A. In the '80s. He may have been doing it. They may have been doing it for some of their accounts, some of their family accounts, you know, the kids' accounts and so on.
Q. Yeah. Would you say the majority of your convertible arbitrage strategy in the '80s was premium trading?

A. I don't know. Probably, probably.
Q. Okay. And how many customers? You know, let's count Avellino and Bienes as one.
A. Right.
Q. And then you've got the big four. That's five. How many more customers did you have up to 1987? I know that's hard, but just your best thought on that.
A. My brain is a little fried to begin with --
Q. Yeah.
A. -- so but I don't know. Probably I would say no more than 50, I would say. I'm guessing.
Q. Okay. So in 1987 there's a crash and you've testified to this. I'm not going to repeat it. You may, but I'm not going to; but seriously, why did you feel compelled to cover those shorts?
A. Which shorts?
Q. Well, when you were saying you would cover the short positions of the big four and they indemnified you, they were big boys. Why wouldn't you just say to them hey, you're in the game?
A. Do you know how many times I ask myself that now?
Q. Yeah.
A. I mean, look, I'm not proud that I did what

I did, you know. I spent a lot of hours with a psychologist here trying to analyze why I did what I did or I -- I had a -- a very special relationship with the big four clients, all right, particularly, you know, with Carl Shapiro and Norman Levy and Stan Chase.

Picower was a little bit different, but look, one of my problems was I always wanted to please everybody. You know, that was my thing forgetting about whether it was my -- you know, whether, you know --

Q. But this was a billion dollars, a billion dollars that you were going to go at risk for?

A. Well, I was -- I had very special relationships with the people in France. I had a special relationship with Shapiro, and I had given my word. You know, something about the securities business, you know, the -- we -- everybody did business on trust.

I know it sounds strange coming from me, all right, but when I went into business the first thing I learned from both Cy Lewis and Gus Levy is they said to me, Bernie, whatever you do, you know, in this business, never break your word because there was no such thing as written contracts in the

securities industry. When everybody called you up and said I want to sell -- when Merrill Lynch called you and said I'm selling you a thousand shares of IBM or a thousand shares of Intel, there was no contract.

You did the trade over the phone. You waited until you got your confirmation, which may have been, you know, two days later or it may have been five days later, and you waited and you assumed that they were going to deliver on time. And if they didn't, you were screwed. There was no written contract.

And in 50 years that I was in business, I never, ever had anyone not honor their contract. You never thought about it. It was something that, you know, if you're in this industry, your word was your bond literally and that was it. You trusted everybody. And that's the way the industry operated and for the most part still operates that way today but not as much.

All right. So when I started doing business with all my clients, I was a little guy with nothing. No one had any reason -- and Carl Shapiro always tells this story famously. When he gave me $100,000, people thought he was crazy. Why

would anybody give me? I was this little kid from Brooklyn, didn't go to Harvard or so on. Why would anybody trust me to give me business, you know, turn their money over to me on a discretionary basis basically and, you know, and go with it?

All right. They did. And because they showed -- he showed faith in me and guys like Levy and so on did, all right, I felt obligated to keep my word. And it was the same thing when I did business in Europe, you know. People showed a lot of faith in me. Now, I made them a lot of money. They weren't doing it, you know, as a philanthropy, but there was a special relationship I had with them.

And all of these clients, I was like a son to them and they were like surrogate fathers to me. All right. So when the crash came in '87 -- and also I had went from nothing. You know, I started my business with literally $500, you know. You know, all of a sudden, you know, by '87 I was a rich guy.

At least I thought I was very successful and everybody in the industry thought I was like, you know, this terrific, terrific success story, which I was. All right. So when the crash came in

'87 and these guys panicked on me, which is not a surprise in hindsight because the one thing every one of them was, which is everybody in the industry is, they're greedy. All right. So they all panicked. They didn't want to give up their returns and I made the mistake. What I should have said to them was look, this is the agreements you have.

Now, could I have sued them? There was no -- there was no written contract, all right, when we made these agreements to, you know, to not unwind, you know, prematurely. This was all, you know, arm's length agreements. These were not -- there were no contracts in that. So I didn't have the right to litigate with Carl Shapiro and Jeff Picower and say listen, you can't sell.

You know, if they wanted to sell regardless of whether they were short, I could have said no, you've got to sell. I could have said cover your shorts, too, in other words, but I didn't. All right.

Q. That was my question. Why didn't you tell them cover your own shorts?

A. Because they said to me -- after we argued and argued for days, everybody says don't panic. Now, you have to understand also that everybody that

was trading convertible bonds through me when the crash came in '87, they had a windfall because every convertible bond went to premiums. So the guys that were doing convertible bonds, they thought I was a goddamned codified genius because the market crashed, but all convertible bonds, you know, which you would expect them to do, went to premiums.

These guys weren't doing convertible bonds except for some of their accounts, as I said, so they didn't -- you know, everybody said -- I said now, look, don't panic. The market will go up. We knew Reliant went down because of the United Airlines bust and the merger and so on. You know, they didn't want to. They just said look, let's sell and get out of it.

All right. I didn't -- I couldn't force them to cover the shorts because I had the Europeans, the French guys on the other side of the trades. I couldn't close them out prematurely. So that's why I didn't unwind.

So and then they said to me, look, as much as I -- all I can use is moral-suasion. And they didn't want to screw me either generally because, number one, we had a close, family-type relationship. And also I made them a lot of money.

They didn't want to kill the goose that laid the golden egg. And they were so sure that the market was -- the shorts were not going to be a problem. So they said fine. We'll hold you harmless. Close out, sell the longs out so we get the advantage of the long-term gains.

Let's not worry about the shorts. We'll take responsibility of the shorts because I said all right, the market eventually is recovered. You're going to lose money on the shorts. They said we're not worried about it. That's why. In hindsight now it looks like a stupid thing to do and it was.

Q. You know, we've looked everywhere. Ellen has actually asked us for the hold harmless agreements. We can't find them. Would Price Waterhouse Cooper as you mentioned have yours? The likelihood, it's a long time ago so when it happened.

A. No. I mean, you know, Ed Kostin, unfortunately, has been dead a long time by now. He did it. I don't know. You know, look, I mean, if you looked for the trust agreements, you would see that I was the -- I was the Trustee and the executor of all of their trust agreements. Now, they've probably changed it by now.

Q. Right.
A. But they -- look, there was meetings with, for example, I don't know whether -- Paul Konigsberg, did he ever go to jail or did he not go to jail?
MR. GOLDMAN: He's in jail.
THE WITNESS: He did not go to jail?
MR. GOLDMAN: Konigsberg went to jail.
MR. SHEEHAN: No. He walked.
MR. GOLDMAN: Not Konigsberg. I'm thinking of someone else. Okay.
THE WITNESS: Okay.
MR. SHEEHAN: He should have gone to jail.
THE WITNESS: Huh? Look, well, I don't think anybody should go to jail, but --
MR. SHEEHAN: But anyway --
THE WITNESS: -- look, these people, there were meetings held, you know, where the family because, look, when these guys made these agreements with me, all right, I said look, these guys were old. They were -- you know, Carl Shapiro thought he was going to die. He's still alive as far as I know.
MR. SHEEHAN: He is.
THE WITNESS: Carl, he must be 104, for

crying out loud, but when he was 60 some odd years old he called me up hysterical when he had his first Bell's palsy attack to Boston and said look, I'm going to die and so on and so forth.

And that's when I made Paul Konigsberg his accountant because, you know, at that time Coopers and -- PaineWebber, who is Coopers and Lybrand really, was his accounting firm; but he wanted, you know, a closer relationship with Paul Konigsberg, who became his accountant.

Q. (By Mr. Sheehan) Who's he? I'm sorry.

A. Carl Shapiro.

Q. Oh, I'm sorry.

A. All right. So all of these guys, most of them except for Picower, but Picower was unhealthy to begin with. He'd had three heart attacks and he'd had, you know -- what does he have? I forgot what the disease is, you shake all the time.

MR. GOLDMAN: Parkinson's.

THE WITNESS: Parkinson's, right. I said look, you know, we have these agreements. I said I want the family to make -- I want to make sure your children know this. They weren't really children. They weren't much younger than -- you know, younger than me, so I said -- but everybody knew of these

agreements, these arrangements that they were responsible for any losses. And we had meetings and everyone knew that. So I wasn't even worried about having, you know, written agreements. We had them, but when I said to them, look, you know what? When you die, I said I want -- who's -- you know, you tell me I'm still handling your investments.

So they -- Levy, for example, took JP Morgan off -- it wasn't JP Morgan. It was Chemical at the time. Took Chemical and its Trustee and executor of his estate off and he made me that. I was going to get to handle all and their kids had to sign agreements that I was the one that was going to handle, you know, all of their monies and I had no responsibility. So this was -- you know, that's what the agreements were. They all knew what was going on.

Q. We're going to end with this today, all right, and we'll start tomorrow morning.

A. Uh-huh.

Q. Early in December you had a meeting in your office. The big four was there. Fred was there. Other people were there. What was the purpose of that meeting?

MS. CHAITMAN: Early December of what

year?
MR. SHEEHAN: '08.
THE WITNESS: Oh, that was the foundation -- that was for the charitable thing that we had. I was -- we had -- I was raising the money for cancer then, you know, and Andy had been diagnosed --
MR. SHEEHAN: Right.
THE WITNESS: -- with cancer. And I forgot the name of our -- the Madoff foundation we had. And I -- they were on the board. It was a board meeting.
Q. (By Mr. Sheehan) Did you not discuss the status of BLMIS that day?
A. No, no.
Q. You'd just paid out $11 billion. Two days later you're going to get turned into the FBI, and you didn't mention anything?
A. Paying out $11 billion?
Q. Pardon?
A. What do you mean paying out 11 billion?
Q. You had just paid out over the past year $11 billion in redemptions?
A. Oh, yeah.
Q. Here's the big four, Fred and other people as you're sitting here?

A. No. The only one that was there was Fred. Shapiro wasn't there. One of his -- Bob Jaffey was there. I don't think Jeff Picower was there. I don't know if his wife was there. I don't think Picower was there. Either he may have been in Florida. No. We didn't -- I mean, I knew that I was in trouble, but no one else did, including my wife.

MR. SHEEHAN: Okay.

MS. CHAITMAN: When you say Fred, are you referring to Fred Wilpon?

THE WITNESS: Yeah. He was on the board. He was on the board, my board.

MR. SHEEHAN: Okay. Let's end it there.

THE VIDEOGRAPHER: Okay. This concludes the deposition. Going off the record at 2:42 p.m.

(The deposition was adjourned at 2:42 p.m.)

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C E R T I F I C A T E

NORTH CAROLINA:

GUILFORD COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 209 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 10th day of May, 2017.

K. Denise Neal

K. Denise Neal, RPR
Registered Professional Reporter
Notary Public No. 200517500101

Federal Rules of Civil Procedure

Rule 30

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(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

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